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**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

WILLIE L. BROWN, JR.
MAYOR

SHARON K. WASSERMAN
PRESIDENT

Tuesday, 6:00 p.m.,
January 6, 2004

JOSEPH GRUBB
EXECUTIVE DIRECTOR

POLLY MARSHALL
VICE-PRESIDENT

25 Van Ness Avenue, #70, Lower Level

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AGENDA

DEC 31 2003

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- I. Call to Order
KHIN MAI AUNG
- II. Roll Call
LARRY BEACH BECKER
DAVID GUSTAV GRUBER
- III. Approval of the Minutes
FREDERICK HOBSON
ANTHONY JUSTMAN
- IV. Remarks from the Public
MERRIE T. LIGHTNER
NEVEO MOSSER
BARTHOLOMEW MURPHY

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- V. Vote on Whether to Go Into Closed Session Regarding the Case of Rossoff v. Rent Board (Superior Court Case No. 401226) (Pursuant to S.F. Administrative Code Section 67.11{a})
- VI. Closed Session re Rossoff, supra (Pursuant to Government Code Section 54956.9{a})
- VII. Vote on Whether or Not to Disclose and Possible Disclosure of Any/All Conversations Held in Closed Session Regarding Rossoff, supra (Pursuant to S.F. Administrative Code Section 67.11{a})
- VIII. Report on Any Actions Taken in Closed Session Regarding Rossoff, supra (Pursuant to Government Code Section 54957.1{a}{2} and S.F. Administrative Code Section 67.14{b}{2})
- IX. Consideration of Appeals

A. 434 Leavenworth #209 AT030352

The tenants appeal the decision certifying capital improvement costs on the grounds of financial hardship.

B. 2421 Judah St. #6 AL030355

The landlord appeals the decision granting a claim of unlawful rent increases.

C. 390 Arguello Blvd. #2 AT030351



The tenants appeal the portion of the decision denying a claim of unlawful rent increase.

D. 3159 Cesar Chavez, Apt. 3 AL030354

The landlord appeals the decision determining that no rent increase is warranted pursuant to Rules and Regulations Section 6.14.

E. 1139 Market St. AL030353

The landlord appeals the decision granting rent reductions due to the landlord's failure to install a sprinkler system in the building, a residential hotel.

F. 1321 A Montgomery AL030356

The landlord appeals the decision granting claims of decreased housing services due to mold and leaks in the unit.

G. 2340 Filbert AT030357

The tenant appeals the remand decision finding that a rent increase pursuant to Costa-Hawkins is warranted.

H. 1414 Taraval #2 AL030348
(cont. from 12/16/03)

The landlords appeal the decision granting rent reductions due to a rodent infestation in the unit.

VI. Communications

VII. Director's Report

VIII. Old Business

A. Rossoff v. Rent Board (Superior Court Case No. 401226)

B. Rules and Regulations Section 4.11

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

IX. New Business

X. Calendar Items

XI. Adjournment

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EXECUTIVE DIRECTOR

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Tuesday, January 6, 2004 at 6:00 p.m. at
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JAN 20 2004

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BARTHOLOMEW MURPHY
NELI NIMA PALMA

I. Call to Order

President Wasserman called the meeting to order at 6:11 p.m.

II. Roll Call

Commissioners Present: Becker; Gruber; Henderson; Lightner;
Mosbrucker; Mosser; Wasserman.
Commissioners not Present: Justman.
Staff Present: Grubb; Wolf.

Commissioner Marshall appeared on the record at 6:15 p.m.; Commissioner
Murphy arrived at the meeting at 6:21 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of December 16, 2003.
(Becker/Gruber: 5-0)

IV. Remarks from the Public

A. Landlord Sue Cauthen of the case at 1321 Montgomery (AL030356)
requested that the Board continue her appeal in order for her to more fully rebut the
tenant's response to her appeal, which was filed one day late and during the
holidays. Ms. Cauthen informed the Board that she is a small landlord, who has
never been brought before the Rent Board before. Ms. Cauthen mis-calendared
the hearing date and takes responsibility for her error, but is hoping for the
opportunity to be heard.

B. Robert Pender, Vice-President of the Parkmerced Residents' Organization
(PRO), read a speech he'd presented to the Board of Supervisors regarding the
history of PRO. Mr. Pender is running for the Democratic Central Committee and
asked for the Board's support.

C. Tenant Gary Near of 1408 California (AT030347) spoke for six minutes on
behalf of himself and co-tenant Terry Perrin. Mr. Near said that he was taping the
meeting himself because the Board does not tape their meetings; Mr. Near
believes this is in violation of the Board's Rules and Regs. Mr. Near reminded the
Board that he had requested continuance of his appeal consideration on December
16, 2003 because the Administrative Law Judge did not address a petition filed by
seven tenants saying that the decision approving the landlord's capital improvement

costs was unwarranted. Mr. Near believes that the Memorandum of Administrative Law Judge was not authored by the ALJ who heard the case because the Memo was not signed and "contained statements that could only be authored by someone who hadn't attended the hearings."

D. Attorney Michael Rossoff told the Board that his comparables case, Rossoff v. Rent Board, concerns unique facts and that the Administrative Law Judge failed to recognize the reason for the very low rents. Mr. Rossoff reminded the Board that in the Vega case, rent increases were granted for subsequent purchasers. Mr. Rossoff also said that the Concord Communities case also looks to whether tenants should benefit from the "windfall" of low rents into perpetuity, and that it is "inconsequential" who holds title.

E. Andy Braden yielded his three minutes to Gary Near, who said he was "stunned" by the landlord's representative having been able to call one of the Senior Administrative Law Judges. Mr. Near considers this an "abomination" and "miscarriage of justice." Mr. Near told the Commissioners that they were "condoning fraud."

F. Tenant Raymond Backle addressed the Board regarding the case at 1139 Market St. (AL030353) concerning the National Hotel. Mr. Backle said that he believes the Decision of the Administrative Law Judge was fair to the property owner because she had two years to install sprinklers in the residential hotel.

G. Tenant Randall Collell resides at the Windsor Hotel. Mr. Collell said that the tenants at the National Hotel have had to wait two years for sprinklers; the tenants at his hotel have been waiting for one year. In the meantime, smoke alarms are insufficient and "folks can die." Since tenants have to pay rent on time, "landlords should be held accountable."

H. Otto Duffy of the Tom Waddell Health Center said that they hear fire sirens going by all day. When a building is sprinklered, the damage is limited to one room, and the whole building doesn't go up. Mr. Duffy asked that the Board "send a message that the City takes this seriously."

I. Attorney Andrew Zacks, representing the landlord in the case concerning the National Hotel, said that the Decision establishes a "special rule" that applies only to residential hotels, that the deadlines were "impossible to meet" and that applications still haven't been approved. Mr. Zacks said that a sprinkler system has been installed at the National Hotel but that the City can't provide sufficient water. Mr. Zacks considers it outrageous that the Administrative Law Judge in his memo depicted the City's partial responsibility as "irrelevant" and asked that the Board reconsider the Decision.

J. Earl Brown of the Central City SRO Collaborative said that "thousands" of residential hotel rooms have been lost to fires, which is why the Sprinkler Ordinance was enacted in the first place. Mr. Brown told the Board that the deadline was extended in order to give landlords more time to comply, and that "housing services were reduced, regardless of the reason." If the Sprinkler Ordinance is unlawful, "go to court, but don't punish tenants."

V. Vote on Whether to Go Into Closed Session Regarding the Case of Rossoff v. Rent Board (Superior Court Case No. 401226) Pursuant to S.F. Administrative Code Section 67.11(a)

MSC: To go into Closed Session. (Marshall/Lightner: 5-0)

MSC: To recuse Commissioners Gruber, Mosser and Lightner from the Closed Session. (Marshall/Lightner: 5-0)

VI. Closed Session re Rossoff, supra, Pursuant to Government Code Section 54956.9{a}

The Board went into Closed Session from 6:50 to 7:20 p.m. with Deputy City Attorneys Rafal Ofierski and Marie Blits to discuss the case of Rossoff v. Rent Board (Superior Court Case No. 401226).

VII. Vote on Whether or Not to Disclose and Possible Disclosure of Any/All Conversations Held in Closed Session Regarding Rossoff, supra.

MSC: Not to disclose the Board's discussion regarding the Rossoff case. (Marshall/Murphy: 4-0)

VIII. Report on Any Actions Taken in Closed Session Regarding Rossoff, supra, Pursuant to Government Code Section 54957.1{a}{2} and S.F. Administrative Code Section 67.14{b}{2}

President Wasserman reported that the Board held a Closed Session to discuss the Rossoff case with its attorneys and voted not to appeal the Judge's decision, but not to disclose the content of the discussions. Commissioners Gruber, Mosser and Lightner were recused from the discussions.

IX. Old Business

A. Rossoff v. Rent Board (Superior Court Case No. 401226)

In accordance with the Judgment granting the Peremptory Writ of Mandate in the above-captioned case, the Board voted as follows below:

MSC: To recuse Commissioners Gruber, Mosser and Lightner. (Becker/Marshall: 5-0)

MSC: To remand the case to the Administrative Law Judge for a new hearing to establish the comparable rents for units 1, 5, 8 and 11 at 1375 Green Street, San Francisco, California, including parking for units 1, 5 and 8. (Becker/Murphy: 4-0)

X. Consideration of Appeals

A. 434 Leavenworth #209

AT030352

The tenant's appeal was filed nineteen days late because the tenants do not speak English and their adult daughter handles all of their mail for them.

MSC: To find good cause for the late filing of the appeal (Becker/Lightner: 5-0)

The landlord's petition for certification of capital improvement costs to 52 of 70 units was granted. The tenants in one unit appeal the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenants' claim of financial hardship. (Becker/Gruber: 5-0)

B. 390 Arguello Blvd. #2

AT030351

The tenants' petition alleging decreased housing services was granted and the landlord was found liable to the tenants in the amount of \$778.75 due to removal of the right to store large extension ladders on the premises. A claim of unlawful rent increase was denied because it was found that the tenants' initial base rent was \$1550 and the amount of \$1400 they paid was a reduced amount to compensate them for management services one of the tenants provided to the building. The tenants appeal on the issue of the allegedly unlawful rent increase, claiming that: the increase from \$1400 to \$1550 was a rent increase, and not a change in the accounting method used for the managerial discount; with the \$150 compensation, the initial base rent for the unit was actually \$1250 per month; the landlord expensed the \$150 per month on her income taxes; the \$1550 amount represented a large increase from the rent the tenants were paying on their prior apartment; and the tenants did not raise the issue earlier because they had misplaced their copy of the lease.

MSC: To deny the appeal. (Lightner/Gruber: 3-2; Becker, Marshall dissenting)

C. 3159 Cesar Chavez, Apt. 3

AL030354

The landlord filed a petition seeking a determination pursuant to Rules Section 6.14. The Administrative Law Judge found that no rent increase was warranted because the tenants have not vacated the subject unit, and permanently reside there as well as at a home they purchased in Richmond. The landlord appeals, claiming that a tenant can only have one principal place of residence, and a rent increase is therefore warranted pursuant to Rules Section 1.21.

MSC: To deny the appeal without prejudice to the landlord filing a petition for determination pursuant to Rules and Regulations Section 1.21. (Marshall/Becker: 5-0)

D. 1139 Market St.

AL030353

Six tenant petitions alleging decreased housing services due to the landlord's failure to install a sprinkler system in this residential hotel were granted and the landlord was found liable to the tenants in the amount of \$20.00 per month. On appeal, the landlord asserts that: the Residential Hotel Sprinkler Ordinance (the RHSO) does not provide remedies for tenants under the Rent Ordinance; because the Rent Board lacks subpoena power, the landlord was prevented from proving that delays were caused by the City's failure to timely process permit applications; there was no method for determining standards for compliance prior to August 21, 2002; sprinkler systems do not constitute housing services; the RHSO is not lawfully part of the City's Housing Code; no Notice of Violation was ever issued; the Water Dept. cannot provide an adequate water supply to the premises; the deadlines imposed by the RHSO were impossible to meet; the Senior Administrative Law Judge who

reviewed the decision is biased against the landlord's attorney; sprinkler systems constitute capital improvements, and not housing services; and the Administrative Law Judge relied on a standard of habitability that is contrary to State law.

MSC: To recuse Commissioners Gruber and Mosser from consideration of this appeal. (Marshall/Becker: 5-0)

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a hearing to determine whether the landlord proceeded reasonably considering the totality of the circumstances, including the fact that she failed to timely file the permit application, and to determine how much the City impeded performance, if at all. If it is established that the landlord has otherwise complied with the Ordinance, but that the City cannot provide water at the appropriate poundage, there shall be no on-going rent reduction. (Wasserman/Lightner: 5-0)

E. 1321 A Montgomery

AL030356

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$1,400.00 due to a leaking window and moldy walls in the unit. The landlord appeals, claiming that: the tenant had a retaliatory motive in filing the petition and misrepresented his reasons for vacating the unit; erroneous Findings in the Decision are not supported by the evidence nor proved by the tenant; the problem was not of such a magnitude as to render the bedroom uninhabitable, some of the problem was dirt and not mold and the amount granted is excessive; the tenant's testimony regarding the other occupant of the unit constituted hearsay; the landlord thought the problem rectified after receiving no further complaints from the tenants; no Notice of Violation was issued; the tenant's negligence contributed to the problem; and any delays in effectuating the repairs were due to conflicting advice the landlord received.

The landlord requested a continuance in order to be able to rebut the tenant's response to her appeal, which was granted by the Board.

F. 2340 Filbert #11

AT030357

The landlord filed a petition seeking a determination as to whether the tenant is subject to an unlimited rent increase pursuant to Costa-Hawkins. The Administrative Law Judge granted the landlord's petition, finding that the original tenant no longer permanently resides at the premises and the subtenant was not in possession prior to January 1, 1996. The tenant's appeal of the decision was denied and the tenant filed a Writ in Superior Court. The Superior Court issued a Judgment granting the Writ and remanding the case for a further factual finding as to whether the owner received "written notice" of the subtenant's tenancy pursuant to Civil Code Section 1954.53(d)(4). The remand decision makes the factual finding ordered by the court and upholds the original decision in finding the rent increase to be justified. The tenant appeals the remand decision, arguing that: the landlord waived her right to the rent increase by accepting rent from the tenant after having knowledge of the subtenant's occupancy; and the Administrative Law Judge should have recused herself from hearing this case on remand after issuing a Memorandum to the Board in response to the tenant's appeal.

MSC: To deny the appeal. (Gruber/Lightner: 3-2; Becker, Marshall dissenting)

G. 1414 Taraval #2

AL030348
(cont. from 12/16/03)

The tenants' petition alleging decreased housing services was granted and the landlords were found liable to the tenants in the amount of \$120 due to a rodent infestation in the unit. On appeal, the landlords claim that: the delays in eradicating the problem were the fault of the tenants; the tenants failed to avail themselves of pest control items purchased for them by the landlords; and the tenants failed to make themselves available for the exterminator.

MSC: To deny the appeal. (Becker/Marshall: 5-0)

XI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the office workload statistics for the month of November, 2003.

XII. Director's Report

Deputy Director Wolf informed the Board that the California Supreme Court denied the landlord's Petition for Review in the Perlstadt case. The Court of Appeal had upheld the Board's ruling that the tenants could use two adjoining apartments as their principal place of residence, which precluded a rent increase under Rules and Regulations Section 1.21.

Executive Director Grubb told the Board that legislation introduced by Supervisor Peskin, which would limit operating and maintenance expense increases to a maximum 7% increase per owner once every five years, passed first reading at the Board of Supervisors. It will go for second reading next week.

Mr. Grubb also told the Commissioners that the factor that we use for calculating the interest rate on security deposits (the discount window rate) has been discontinued by the Feds. Mr. Grubb was advised that the discount window primary credit rate is similar, and is still in effect. However, this issue will have to go back to the Board of Supervisors for an amendment to Chapter 49, which means that no new rate will be in effect by March 1st.

IX. Old Business (cont.)

B. Rules and Regulations Section 4.11

At the request of Supervisor Peskin, and subsequent to a Public Hearing before the Land Use Committee, Senior Administrative Law Judge Sandy Gartzman brought several issues pertaining to utility passthroughs to the Board's attention. The Board discussed those issues with Ms. Gartzman at the meeting on December 2nd. Subsequently, Ms. Gartzman, in conjunction with Senior Staff, drafted proposed regulations to address the issues raised. The draft regulations contain certain policy decisions, subject to approval by the Board, which include: the elimination of Method 2, so that there would be only one method for calculating a PG&E passthrough; incorporation of indexing for inflation; continuing to allocate utility cost increases by the number of rooms in the unit; requiring separate metering in order to

include costs associated with coin-operated laundry facilities, fee-based parking and storage areas, and other commercial spaces; energy conservation measures on the part of the landlord are not required; and a landlord must file a petition in order to impose a utility passthrough. The Board will continue their discussion of possible amendments to Rules §4.11 at the January 20th meeting.

IV. Remarks from the Public (cont.)

K. Landlord's Representative Andy Braden asked if input regarding the proposed amendments to Rules §4.11 was welcome from the public, and was assured that it was. He also confirmed that the current law is in effect for notices going out now.

XIII. Calendar Items

January 13, 2004 - NO MEETING

January 20, 2004

5 appeal considerations (1 cont. from 1/6/04)

Old Business:

A. 434 Leavenworth #209 (AT030352)

B. Rules and Regulations Section 4.11 (PG&E Passthroughs)

C. Rules and Regulations Section 6.11 (Comparables Increases)

New Business: AB 647 (Unabated Code Violations)

XIV. Adjournment

President Wasserman adjourned the meeting at 9:20 p.m.



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- III. Approval of the Minutes
- IV. Remarks from the Public

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- V. Consideration of Appeals

A. 755 Green St. AL030359

The landlord appeals the decision granting a claim of unlawful rent increases.

B. 485 Rolph St. AL030358

The landlord appeals the decision granting refunds due to rent overpayments.

C. 123 - 12th Ave., Apt. 1 AL030358

The landlord appeals the decision denying a request for rescission of a notice of constraints.

D. 1321 A Montgomery AL030356
(cont. from 1/6/04)

The landlord appeals the decision granting claims of decreased housing services due to mold and leaks in the unit.

- VI. Communications
- VII. Director's Report
- VIII. Old Business

A. 434 Leavenworth #209 (AT030352) (considered on 1/6/04)



B. Proposed Amendments to Rules Section 6.11 Regarding
Comparables Rent Increases

C. Proposed Amendments to Rules Section 4.11 Regarding PG&E
Passthroughs

IV. Remarks from the Public (cont.)

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IX. New Business

Assembly Bill 647 (Unabated Code Violations)

X. Calendar Items

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Tuesday, January 20, 2004 at 6:00 p.m. at
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DEBORAH HENDERSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

I. Call to Order

President Wasserman called the meeting to order at 6:14 p.m.

II. Roll Call

Commissioners Present: Becker; Gruber; Henderson; Justman;
Lightner; Mosbrucker; Wasserman.
Commissioners not Present: Marshall; Mosser.
Staff Present: Gartzman; Grubb; Lee; Wolf.

Commissioner Murphy appeared on the record at 6:21 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of January 6, 2004.
(Lightner/Becker: 5-0)

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IV. Remarks from the Public

A. Landlord Sue Cauthen of 1321 A Montgomery (AL030356) thanked the Board for continuing her appeal and asked that the case be remanded so that she can make her case to the Administrative Law Judge. Ms. Cauthen said that the mold was caused by insufficient heat in the unit because the tenant did not want to pay the PG&E costs. She also alleged that the tenant had an improper motive in filing the Rent Board petition and that the amount granted was excessive.

B. Michelle Horneff, Director of the Professional Property Management Association, asked whether there would be a Public Hearing on the proposed amendments to Rules Section 4.11, or if the changes would be adopted "as is." Ms. Horneff was informed that a Public Hearing is necessary before any changes can be made to the Rules and Regulations.

V. Consideration of Appeals

A. 755 Green St.

AL030359

The tenant's petition alleging unlawful rent increases was granted and the landlord was found liable to the tenant in the amount of \$2,509.32. On appeal, the landlord claims that the Administrative Law Judge was in error as to the anniversary date for the 2001 rent increase.

MSC: To deny the appeal. (Becker/ Mosbrucker: 3-2; Gruber, Lightner dissenting)

B. 485 Rolph St.

AL030358

The tenants' petition alleging unlawful rent increases was granted and the landlord was found liable in the amount of \$13,600.00. On appeal, the landlord asserts that: the rent increase in 1998 occurred more than three years ago and the Statute of Limitations in Ordinance Section 37.8(7) precludes determining it to be null and void; and the amount of rent that the tenants have failed to pay should be deducted from the amount ordered refunded.

MSC: To deny the appeal. (Becker/Mosbrucker: 5-0)

C. 123 – 12th Ave., Apt. 1

AL030361

The landlords' request for rescission of a notice of constraints recorded by the Rent Board subsequent to a notice for relative move-in eviction was denied. The Administrative Law Judge found that, although the landlords and tenant ultimately reached a monetary settlement and the tenant voluntarily terminated his tenancy, the landlord obtained possession of the unit pursuant to the service of the notice to vacate. Additionally, Ordinance Section 37.9B(e) provides that a landlord may apply for rescission of a recorded notice of constraints only if the tenant does not vacate the unit, which is not the case here. Therefore, the Administrative Law Judge found that re-rental constraints continue to apply. The landlord appeals, maintaining that: the Administrative Law Judge has no authority to interfere with the settlement agreement of consenting parties who were represented by counsel, and which was approved by a retired Superior Court Judge.

MSC: To deny the appeal. (Becker/Mosbrucker: 4-1; Gruber dissenting)

D. 1321 A Montgomery

AL030356
(cont. from 1/6/04)

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$1,400.00 due to a leaking window and moldy walls in the unit. The landlord appeals, claiming that: the tenant had a retaliatory motive in filing the petition and misrepresented his reasons for vacating the unit; erroneous Findings in the Decision are not supported by the evidence nor proved by the tenant; the problem was not of such a magnitude as to render the bedroom uninhabitable, some of the problem was dirt and not mold and the amount granted is excessive; the tenant's testimony regarding the other occupant of the unit constituted hearsay; the landlord thought the problem rectified after receiving no further complaints from the tenants; no Notice of Violation was issued; the tenant's negligence contributed to the problem; and any delays in effectuating the repairs were due to conflicting advice the landlord received.

MSC: To accept the appeal and remand the case for a new hearing.
(Lightner/Gruber: 5-0)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received three Memoranda from staff regarding the items calendared under "Old Business" and an article from The Recorder stating that a class action lawsuit has been filed by Attorneys Andrew Zacks and Paul Utrecht on behalf of the Small Property Owners of San Francisco challenging the provisions of Proposition G.

VII. Director's Report

Executive Director Grubb informed the Board that Supervisor Peskin has solicited input regarding the appropriate factor to be used for calculating the interest rate on security deposits, now that the discount window rate has been discontinued by the federal government. The Supervisor is considering the 6-month CD rate published by the feds, which is currently 1.2%, the same rate as last year. Legislation amending Chapter 49 will be introduced at the full Board of Supervisors Tuesday the 27th. An attempt will be made to waive the 30-Day Rule and send the legislation directly to committee. The Supervisor will also try to make the legislation retroactive to March 1st.

VIII. Old Business

A. 434 Leavenworth St. (AT030352) (considered on 1/6/04)

Senior Administrative Law Judge Tim Lee responded to Commissioner Marshall's inquiry regarding the treatment of debt service in the above-referenced case. The new owner filed the petition for an O&M rent increase. The prior owner had paid interest and principal on the loan, but the new owner purchased the property with an interest only loan. The Administrative Law Judge agreed with the landlord's representative that it would be unfair to compare the new owner's interest only payments in Year 2 to the interest and principal payments of the prior owner in Year 1, and limited the debt service expenses to interest only in Year 1. Senior Staff concurs that principal and interest payments that are required by the loan agreement and are paid should be included. In the future, in cases such as this, the Year 1 debt service figure will include both principal and interest payments. In this case, however, the tenants were not prejudiced because the landlord would still have been entitled to a full 7% O&M rent increase for all units based on a comparison of the new owner's average interest only payment to the prior owner's principal and interest payment.

B. Proposed Amendments to Rules Section 6.11 Regarding Comparables Rent Increases

At the Board meeting on September 30th, Senior Administrative Law Judge Tim Lee informed the Board that Judge Quidachay granted the landlord's writ in the case of Rossoff v. Rent Board. The Judge noted that since Section 6.11(a)(1) refers to extraordinary circumstances "including, but not limited to" the specified circumstances set forth in the Section, the regulation must be read expansively and not restrictively. Since such an expansive interpretation was not the intent of the Board in adopting the regulation, the Commissioners asked staff to draft an amendment to address the court's concern with the existing language of the regulation. The proposed amendment was put out for Public Hearing on November 18, 2003 but was not adopted. At the request of the Commissioners, this issue was recalendared. The text of the proposed amendment follows below (strikethrough for deletions and double underline for additions):

(a) Petition Based on Extraordinary Circumstances

(1) The provisions of this Section 6.11(a) shall apply only in ~~extraordinary circumstances, including but not limited to~~ the following situations:

(A) where, because of a special relationship between the landlord and tenant, or ~~through due to~~ fraud, mental incompetency, or ~~some other reason~~ extraordinary circumstances unrelated to market conditions, the initial rent on a unit was set very low or the rent was not increased or was increased only negligible amounts during the tenancy; or

(B) where the landlord became owner of record of a Proposition I Affected Unit between September 1, 1993 and December 22, 1994, or where the landlord entered into an agreement to purchase a Proposition I Affected Unit which agreement became non-contingent on or after September 1, 1993 and before November 9, 1994, and, in becoming owner of record or entering into the purchase agreement, the landlord relied on the ability to increase rents without limitation from the Rent Ordinance.

Passage of Proposition I at the November 1994 election does not in and of itself satisfy this Section 6.11(a)(1), though it may be considered.

MSC: To put the proposed amendments to Rules and Regulations Section 6.11(a)(1) regarding comparables rent increases out for Public Hearing, with the stipulation that the amendment shall apply to pending cases, if any. (Becker/Mosbrucker: 5-0)

A Public Hearing on the proposed amendment will be held on Tuesday, February 17th.

C. Proposed Amendments to Rules and Regulations Section 4.11 Regarding PG&E Passthroughs

Senior Administrative Law Judge Sandy Gartzman went over draft regulations to address certain problems with the current PG&E passthrough provisions of the Rules and Regulations. Ms. Gartzman pointed out the differences between the proposal and the regulations currently in effect. These include: 1) the proposal contains indexing base year utility costs for inflation – after debating the merits of indexing, the Commissioners asked that alternate drafts be prepared, one that includes indexing, and one that does not; 2) the proposal requires that a landlord file a petition prior to giving notice of a utility passthrough, although a tenant may still file a challenge to the passthrough if the landlord fails to file a petition; 3) the proposal eliminates Method 2 under Rules Section 4.11, so that there would be only one method for calculating a PG&E passthrough; 4) as to laundry facilities where a user fee is charged, the Commissioners agreed that: if there is separate metering, the landlord may not charge costs attributable to the laundry area in the passthrough; if there is no separate metering, the landlord cannot obtain a PG&E passthrough unless they deduct the user fees collected; 5) as to other commercial fee use areas, such as parking and storage, the landlord may pass through utility costs to all units unless the tenant proves that s/he does not pay a user fee for that area and the area in question is not a common area; 6) the proposal requires that a Base Year of 2002 be used – the Commissioners requested that exceptions be added for the situation where a landlord has a passthrough in effect as of the effective date of the

amendments, in which case they may elect to continue to use their operative base year; and a landlord should be allowed to petition for approval of an alternate base year if they are a subsequent purchaser who has demonstrated a good faith but unsuccessful effort to obtain base year utility cost records; 7) energy conservation measures will not be required, but informational language will be included on the petition; and 8) the passthrough will stay in effect for no longer than 12 months without recalculation.

Senior Staff will re-draft the proposed amendments and discussion of this issue will be continued at the February 3rd Board meeting.

IV. Remarks from the Public (cont.)

C. Tenant Patricia Henricksen of 755 Green St. (AL030359) asked whether the Commissioners had received a copy of the letter she submitted. Ms. Henricksen told the Board that she did not get the landlord's notice of rent increase until March 1st; alleged that the notice the landlord submitted upon appeal is "bogus"; and informed the Board that she keeps accurate records.

IX. New Business

Assembly Bill 647 (Unabated Code Violations)

The Commissioners briefly discussed AB 647, which took effect on January 1, 2004. The legislation amends Civil Code Section 1942.4 to prohibit a landlord from demanding or collecting rent, or issuing a notice of rent increase or 3-day notice to pay rent or quit, where certain code violations exist, a notice of violation is not abated within 35 days, and the delay is without good cause. AB 647 also provides for attorney's fees to a tenant who successfully defends an eviction action based on the landlord's violation of the section. It was the consensus of the Board to wait until a case comes before them on appeal before making any policy interpretations of the new law.

X. Calendar Items

January 27, 2004 - NO MEETING

February 3, 2004

5 appeal considerations (1 cont. from 1/20/04)

Old Business:

A. Rules and Regulations Section 4.11

B. AB 647

XI. Adjournment

President Wasserman adjourned the meeting at 8:41 p.m.



**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

Tuesday, 6:00 p.m.,
February 3, 2004
25 Van Ness Avenue, #70, Lower Level

AGENDA

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- LARRY BEACH BECKER I. Call to Order
DAVID GRUBER
DEBORAH HENDERSON II. Roll Call
ANTHONY JUSTMAN
MERRIE T. LIGHTNER III. Approval of the Minutes
CATHY MOSBRUCKER
NEVEO MOSSER IV. Remarks from the Public
BARTHOLOMEW MURPHY

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations,
members of the public shall be limited to comments of no more
than 3 minutes' duration.

V. Consideration of Appeals

A. 66 Hazelwood AT030360
(cont. from 1/20/04)

The tenant appeals the remand decision denying one of two financial
hardship claims.

B. 1036 Polk St. #207 AT040002

The tenant appeals the decision certifying the cost of a seismic retrofit
project on the grounds of financial hardship.

C. 440 Davis Court #1118 AT040003

The tenant appeals the dismissal of his financial hardship appeal due to
his failure to appear at the remand hearing.

D. 736 Leavenworth, Apt. #7 AL030371

The landlord appeals the decision granting a claim of unlawful rent
increase.

E. 828 Taylor St. AL040001

The landlord appeals the portion of the decision denying certification of
capital improvement costs.

VI. Communications



VII. Director's Report

VIII. Old Business

A. Proposed Amendments to Rules Section 4.11 Regarding PG&E Passthroughs

B. Assembly Bill 647 (Unabated Code Violations)

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

IX. New Business

X. Calendar Items

XI. Adjournment

ACCESSIBLE MEETING POLICY

American sign language interpreters will be available upon request. Please contact the Rent Board at 252-4648 at least 72 hours prior to the meeting. Late requests will be honored if possible. Translation services, sound enhancement or alternative formats are available if requested at least 72 hours prior to the meeting. Call 252-4641 to place your specific request.

會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4641。

Se pueden obtener servicios de traducción, ampliación de sonido, u otras formas de presentación si se solicitan por lo menos 72 horas antes de la reunión. Llame al 252.4641 para hacer su solicitud.

“Individuals with severe allergies, environmental illness, multiple chemical sensitivity or relate disabilities should call our accessibility hotline at (415) 554-8925 to discuss meeting accessibility. In order to assist the City’s efforts to accommodate such people, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.”

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There is accessible parking available on adjacent streets (Oak Street and Hickory). Metered street parking is also available.

Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Ray Cabezas, has been designated to coordinate and carry out this agency’s compliance with the nondiscrimination requirement of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided thereunder, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845,

Know Your Rights Under the Sunshine Ordinance

Government’s duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people’s business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people’s review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force at 554-4851.



SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, February 3, 2004 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

GAVIN NEWSOM
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

DOCUMENTS DEPT.

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DEBORAH HENDERSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

I. Call to Order

Vice-President Marshall called the meeting to order at 6:12 p.m.

II. Roll Call

Commissioners Present: Becker; Gruber; Henderson; Justman;
Lightner; Marshall; Mosbrucker; Mosser.
Commissioners not Present: Wasserman.
Staff Present: Grubb; Wolf.

Commissioner Murphy appeared on the record at 6:24 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of January 20, 2004.
(Becker/Gruber: 5-0)

IV. Consideration of Appeals

A. 1036 Polk St. #507

AT040002

The tenant's appeal was filed eight months late because the tenant is not a native English speaker.

MSC: To recuse Commissioner Marshall from consideration of this appeal. (Becker/Gruber: 5-0)

MSC: To find good cause for the late filing of the appeal.
(Becker/Mosbrucker: 5-0)

The landlord's petition for certification of the costs of a seismic retrofit project was granted. The tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing to determine whether the passthrough applies to this tenant in this unit and, if so, to decide the tenant's financial hardship claim.
(Becker/Mosbrucker: 5-0)

B. 440 Davis Court #1118

AT040003



The tenant's appeal was filed two months late because the tenant is not a native English speaker and suffers from dementia and depression.

MSC: To find good cause for the late filing of the appeal.
(Becker/Justman: 5-0)

The landlord's petition for certification of capital improvement costs was granted. The tenant's hardship appeal was accepted and remanded for hearing. Due to the tenant's failure to appear at the properly noticed hearing, the tenant's appeal was dismissed. The tenant appeals the dismissal on remand, explaining that he is not a native English speaker and suffers from dementia and depression.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. Should the tenant again fail to appear, no further hearings will be granted, absent extraordinary circumstances. (Becker/Marshall: 4-1; Gruber dissenting)

C. 736 Leavenworth, Apt. #7

AL030371

The tenant filed a petition requesting a determination as to whether the current rent is a lawful amount. Due to a rent increase for an additional occupant on the premises, the Administrative Law Judge determined that the tenant was entitled to a refund of rent overpayments in the amount of \$4,583.78. On appeal, the landlord claims that the decision is in error as to the amount of rent received from the tenant for the months of November and December of 2003 and April of 2002.

MSC: To deny the appeal without prejudice to the landlord collecting debts that are owed, if any. (Becker/Marshall: 5-0)

D. 828 Taylor St.

AL040001

The landlord's petition for certification of capital improvement costs was certified, only in part. The landlord appeals, arguing that: timely good faith efforts to commence and complete the exterior painting work were undertaken within 90 days of issuance of the Notice of Violation; and the garden replacement was incidental to the exterior painting work, and therefore should be certified.

MSC: To deny the appeal as to the garden issue, but to accept the appeal on the issue of the exterior paint job and remand the case for a hearing to determine when the painting started and if there were justifiable reasons for any delay.
(Becker/Marshall: 5-0)

V. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received a letter from landlord Bill Quan regarding proposed amendments to Rules Section 4.11.

VI. Director's Report

Executive Director Grubb informed the Commissioners that Rent Board Supervisor Pedro Ruiz will be retiring after twenty years of service to the agency. His last day in the office will be February 18th.

MSC: To commend and thank Rent Board Supervisor Pedro Ruiz for his twenty years of service to the Rent Board, and for his efforts on behalf of the tenants and landlords of San Francisco.
(Marshall/Lightner: 5-0)

VII. Old Business

A. Proposed Amendments to Rules and Regulations Section 4.11 Regarding Utility Passthroughs

Senior Administrative Law Judge Sandy Gartzman discussed changes made to draft regulations amending the utility passthrough provisions per instructions from the Board at the last meeting. The major changes in the new drafts are as follows: one version includes indexing of base year utility costs for inflation, while the other does not; section 10.12 was left in to allow for challenges by tenants to current utility passthroughs and new section 10.13 was added for tenant challenges to passthroughs noticed on or after the effective date of the proposed amendments; 2002 will be the base year for all tenants, with the following three exceptions: (1) where a landlord has a passthrough in effect as of the effective date of the amendments, they will be allowed to keep the tenant's same base year, (2) where a tenant moves in after 12/31/03, the base year will be the calendar year preceding the inception of the tenancy and, (3) where a landlord became an owner of record after 12/31/02, the landlord will be allowed to petition for approval of an alternate base year if the landlord demonstrates a good faith but unsuccessful effort to obtain base year utility cost records; where there are laundry facilities on the premises and a user fee is charged and there is no separate metering of the laundry facilities, the landlord may not impose any utility passthrough unless the user fees collected are deducted from the total utility costs for the building; and where there is no separate metering and the tenants cannot use the laundry facilities, then no passthrough will be allowed.

As to other commercial fee use areas that are not separately metered, such as parking and storage, the new draft provided that a landlord could pass through utility costs to all units unless the tenant proved that s/he does not pay a user fee for that area and the area in question is not a common area. Commissioner Gruber brought up a building that he owns, which contains 40 units and only 5 parking garages, without a separate meter. For that building, under the proposed draft regulations, he would be precluded from imposing a utility passthrough. As the Commissioners agreed that the result in that instance was too harsh, it was decided that the calculation of the number of rooms in the building shall include parking and storage spaces, which shall each be counted as separate rooms.

Ms. Gartzman will incorporate the agreements reached at tonight's meeting into a new draft, which will be discussed at the meeting on February 17th.

B. Assembly Bill 647 (Unabated Code Violations)

At their meeting on January 20th, the Commissioners discussed AB 647, which took effect on January 1, 2004. The legislation amends Civil Code Section 1942.4 to prohibit a landlord from demanding or collecting rent, or issuing a notice of rent increase or 3-day notice to pay rent or quit, where certain code violations exist, a notice of violation is not abated within 35 days, and the delay is without good cause. AB 647 also provides for attorney's fees to a tenant who successfully defends an eviction action based on the landlord's violation of the section. At the January 20th

meeting, it was the consensus of the Board to wait until a case comes before them on appeal before making any policy interpretations of the new law.

Commissioner Murphy asked that this issue be re-calendared for discussion. It is his opinion that the granting of a 100% rent reduction pursuant to AB 647 constitutes a penalty against the landlord, which is not allowed under the Rent Ordinance. The Executive Director will ask the Office of the City Attorney for an opinion on this question, as well as the question of which types of code violations would warrant a 100% rent reduction under AB 647.

VIII. New Business

A. Commissioner Gruber inquired regarding the 4,000,097 hits on the Rent Board's web site in December, 2003.

B. Since Executive Director Grubb will be retiring and his last day in the office will be April 1, 2004, Commissioner Becker inquired regarding plans for the transition to a new Director, and asked whether the Board should get involved.

C. Commissioner Murphy informed the Board that ex-Hearing Officer Dave Wharton recently passed away. He was joined by his fellow Commissioners, and the entire staff of the Rent Board, in expressing condolences to the Wharton family.

D. Commissioner Murphy questioned the information currently being provided by Rent Board staff regarding the Cwynar case, which is that the Decision only applies to the named plaintiffs, and that Proposition G is still in effect. Commissioner Murphy requested that the City Attorney be asked whether the Decision also applies to members of the named plaintiff organizations, and/or members of the general public. Mr. Grubb will request that the City Attorney issue an Opinion on this question.

IX. Calendar Items

February 10, 2004 - NO MEETING

February 17, 2004

4 appeal considerations (1 cont. from 2/3/04)

Public Hearing:

Proposed Amendments to Rules Section 6.11

Old Business:

Proposed Amendments to Rules Section 4.11

X. Adjournment

Vice-President Marshall adjourned the meeting at 8:24 p.m.



SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

Tuesday, 6:00 p.m.,
February 17, 2004

25 Van Ness Avenue, #70, Lower Level

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AGENDA

LARRY BEACH BECKER
DAVID GRUBER
DEBORAH HENDERSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- V. Consideration of Appeals

A. 66 Hazelwood Ave. #2 AT030360
(cont. from 2/3/04)

The tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

B. 618 – 25th Ave. AT040004

The tenant appeals the decision denying a claim of unlawful rent increase.

C. 438 Castro St. AT040005

The subtenant appeals the decision denying his claim that he was paying more than his proportional share of the rent.

D. 1550 Bay St., b-126 AL040006

The landlord appeals the decision granting a rent reduction due to decreased housing services.

- VI. Public Hearing

6:30 Proposed Amendments to Rules Section 6.11 Regarding
Comparables Rent Increases

- VII. Communications



VIII. Director's Report

IX. Old Business

Proposed Amendments to Rules and Regulations Section 4.11
Regarding PG&E Passthroughs

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

X. New Business

XI. Calendar Items

XII. Adjournment

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SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

GAVIN NEWSOM
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

January 28, 2004

NOTICE OF PUBLIC HEARING

DATE: February 17, 2004

TIME: 6:30 P.M.

PLACE: 25 VAN NESS AVENUE (AT MARKET ST.)
SUITE 70, LOWER LEVEL
SAN FRANCISCO, CALIFORNIA

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THE RENT BOARD COMMISSIONERS INVITE THE PUBLIC TO COMMENT ON PROPOSED CHANGES TO THE RULES AND REGULATIONS GOVERNING THE RESIDENTIAL RENT STABILIZATION AND ARBITRATION ORDINANCE, CHAPTER 37 OF THE SAN FRANCISCO ADMINISTRATIVE CODE.

THE COMMISSION IS TAKING PUBLIC COMMENT ON THE LANGUAGE THAT FOLLOWS AMENDING SECTION 6.11(a). The proposed amendments are intended to clarify the intent and purpose of this section. The Board has determined that it will apply to pending cases, if any.



Rules and Regulations Section 6.11(a) is amended as follows (strikethrough for deletions and double underline for additions): Note: Section (a) is the only portion of this section being amended and therefore this version omits the balance of the section not affected.

(a) Petition Based on Extraordinary Circumstances

(1) The provisions of this Section 6.11(a) shall apply only in ~~extraordinary circumstances, including but not limited to~~ the following situations:

(A) where, because of a special relationship between the landlord and tenant, or ~~through~~ due to fraud, mental incompetency, or ~~some other reason~~ extraordinary circumstances unrelated to market conditions, the initial rent on a unit was set very low or the rent was not increased or was increased only negligible amounts during the tenancy; or

(B) where the landlord became owner of record of a Proposition I Affected Unit between September 1, 1993 and December 22, 1994, or where the landlord entered into an agreement to purchase a Proposition I Affected Unit which agreement became non-contingent on or after September 1, 1993 and before November 9, 1994, and, in becoming owner of record or entering into the purchase agreement, the landlord relied on the ability to increase rents without limitation from the Rent Ordinance.

Passage of Proposition I at the November 1994 election does not in and of itself satisfy this Section 6.11(a)(1), though it may be considered.



SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, February 17, 2004 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

GAVIN NEWSOM
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

DOCUMENTS DEPT.

LARRY BEACH BECKER
DAVID GRUBER
DEBORAH HENDERSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

I. Call to Order

President Wasserman called the meeting to order at 6:12 p.m.

MAR - 1 2004

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II. Roll Call

Commissioners Present:

Becker; Henderson; Justman; Lightner;
Marshall; Mosbrucker; Mosser; Wasserman.
Gruber.
Grubb; Lee; Wolf.

Commissioners not Present:

Staff Present:

Commissioner Murphy appeared on the record at 6:27 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of February 3, 2004.
(Mosser/Becker: 5-0)

IV. Consideration of Appeals

A. 66 Hazelwood Ave. #2

AT030360
(cont. from 2/3/04)

The landlords' petitions for certification of capital improvement costs were granted; a passthrough in the amount of \$303.08 was approved in 1998 and a passthrough in the amount of \$19.69 was approved in 2003. The tenant filed a timely appeal of the recent passthrough and an untimely appeal of the 1998 passthrough on the grounds of financial hardship. The Board remanded the appeal on the 2003 passthrough for a hearing on the hardship claim, and remanded the appeal regarding the 1998 passthrough for a hearing to determine whether there was good cause for the late filing of the appeal. The Administrative Law Judge found sufficient financial hardship to defer the recent passthrough, but found no good cause for the late filing of the appeal regarding the 1998 passthrough, as she did not find credible the tenant's assertions that he failed to receive either of two copies of the Decision mailed to him. The tenant appeals the remand decision, maintaining that: there is no Proof of Service or receipt proving that the tenant received a copy of the Decision from the landlord; the tenant failed to pay the requested rent increase on time, indicating that he did not receive the Decision; the landlord has provided false and misleading statements in this and a prior eviction case before the Board; and the landlord provided the Board with an incorrect mailing address for the tenant.

MSC: To deny the appeal. (Lightner/Justman: 4-1; Marshall dissenting)

B. 618 – 25th Ave.

AT040004

The tenants' petition alleging an unlawful increase in rent was denied. The Administrative Law Judge found that although one of the tenants had lived in the subject unit as a child, he had relinquished his tenancy rights upon temporarily moving out of the unit. On appeal, the tenants claim that: the Decision was improperly based on the tenants' credibility, rather than the applicable law; an individual can be a tenant at more than one location; and the tenant never relinquished his tenancy rights at the subject unit.

MSC: To deny the appeal. (Lightner/Mosser: 3-2; Becker, Marshall dissenting)

C. 438 Castro St.

AT040005

The subtenant filed a petition alleging that he was being charged more than the lawful and proportional shares of the rent. The Administrative Law Judge denied both the petitions. The subtenant appeals, claiming that: the Administrative Law Judge did not ask for copies of police reports or photos of damage to the unit; the Master Tenant is running an illegal business out of the unit; and the Master Tenant lied under oath.

MSC: To deny the appeal. (Marshall/Lightner: 5-0)

D. 1550 Bay St., B126

AL040006

The landlord's appeal was filed eleven days late because the landlord's attorney had been out of town, and was taken ill upon her return.

MSC: To recuse Commissioner Murphy from consideration of this appeal. (Becker/Lightner: 5-0)

MSC: To find good cause for the late filing of the appeal. (Lightner/Justman: 4-1; Marshall dissenting)

The tenant's petition alleging decreased housing services due to the loss of the privilege of barbecuing his meals on his patio was granted and the landlord was found liable to the tenant in the amount of \$25.00 per month, based on the facts of this case. The landlord appeals, maintaining that the ability to barbecue on a deck is not a housing service under the Ordinance and the Decision fails to take into consideration safety concerns at the subject premises.

MSC: To deny the appeal. (Becker/Marshall: 3-2; Lightner, Mosser dissenting)

V. Public Hearing

Proposed Amendments to Rules Section 6.11 Regarding Comparables Rent Increases

From 6:51 to 6:56 p.m., the Board held a Public Hearing on proposed amendments to Rules and Regulations Section 6.11(a) which would make it clear that comparables

increases are only warranted in cases where the initial rent was set low due to extraordinary circumstances unrelated to market conditions. Landlord Michael Rossoff spoke regarding his concerns that retroactive application of any new language would be unfair, since a landlord could have relied on the existing language upon purchase. Mr. Rossoff also expressed his belief that some of the language of the regulation is still ambiguous, for example, he feels that the term "special relationship" is unclear and asked that the Board provide some examples. Upon conclusion of the hearing, the Board passed the following motion:

MSC: To adopt the proposed amendments to Rules and Regulations Section 6.11(a), which shall apply to existing cases, if any, except where the court has ordered otherwise. (Becker/Marshall: 3-2; Lightner, Mosser dissenting)

The Section now reads as follows below:

6.11(a) Petition Based on Extraordinary Circumstances

(1) The provisions of this Section 6.11(a) shall apply only in the following situations:

(A) where, because of a special relationship between the landlord and tenant, or due to fraud, mental incompetency, or other extraordinary circumstances unrelated to market conditions, the initial rent on a unit was set very low or the rent was not increased or was increased only negligible amounts during the tenancy; or

(B) where the landlord became owner of record of a Proposition I Affected Unit between September 1, 1993 and December 22, 1994, or where the landlord entered into an agreement to purchase a Proposition I Affected Unit which agreement became non-contingent on or after September 1, 1993 and before November 9, 1994, and, in becoming owner of record or entering into the purchase agreement, the landlord relied on the ability to increase rents without limitation from the Rent Ordinance.

Passage of Proposition I at the November 1994 election does not in and of itself satisfy this Section 6.11(a)(1), though it may be considered.

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. The office workload statistics for the month of January, 2004.

B. A letter from landlord Bill Quan regarding proposed amendments to Rules and Regulations Section 4.11.

C. A letter from landlord Michael Rossoff regarding proposed amendments to Rules and Regulations Section 6.11(a).

VII. Director's Report

Executive Director Grubb reported as follows:

A. The departmental budget will be going to the Mayor and Controller at the end of the month. The proposed budget is not much different from the current budget, except for a reduction in City Attorney hours. This should reduce the amount of the fee by a dollar or two. A 5% reserve fund will be set up because it is difficult for the Department to predict the workload or prospective litigation. Services being provided to other departments by the ALJ staff are paid for by those departments, who are told to set aside funds for this purpose.

B. Supervisor Gonzalez' legislation allowing tenants to obtain roommates as long as they do not exceed the occupancy standards in the Housing Code was going to be introduced on February 23rd, but has been pulled back.

C. Supervisor Peskin will be holding a hearing to establish the new interest rate for security deposits.

VIII. Old Business

Proposed Amendments to Rules and Regulations Section 4.11 Regarding PG&E Passthroughs

Senior Administrative Law Judge Tim Lee and the Commissioners continued discussing proposed amendments to the utility passthrough provisions of the Rules and Regulations. Mr. Lee informed the Board that, in the current draft, commercial fee use areas other than laundry facilities that are not separately metered, such as parking and storage spaces, are counted as separate rooms. Commissioner Marshall expressed a concern regarding the specification that only user fees actually paid to the landlord for laundry facilities need to be deducted from the total utility costs for the building, rather than the total user fees. After discussion, the Board asked that this provision be changed so that the net income received by the landlord shall be deducted. Additionally, it was the consensus of the Board that a petition could be filed for one or more than one unit in the building on the same petition form. The Commissioners also received an example of the effect of indexing on a capital improvement passthrough. This led to a discussion between Commissioners Marshall and Murphy on the appropriateness of indexing the PG&E passthrough calculation.

A new draft of proposed amendments to the regulations will be provided by Senior Staff, which will be reviewed at the next meeting.

IX. Calendar Items

February 24, 2004 - NO MEETING

March 2, 2004 – NO MEETING, ELECTION DAY

March 9, 2004

5 appeal considerations

Old Business: Proposed Amendments to Rules Section 4.11

New Business: Proposed Amendments to Rules Sections 2.13 & 2.15

X. Adjournment

President Wasserman adjourned the meeting at 8:01 p.m.



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Rent Board >> Rent Board Meeting Information >> Commission Meeting

City of San Francisco
The Rent Board**March 08, 2004 (Public Hearing)****March 8, 2004****NOTICE OF PUBLIC HEARING****DATE:** March 23, 2004**TIME:** 6:30 P.M.**PLACE:** 25 VAN NESS AVENUE (AT MARKET ST.)
SUITE 70, LOWER LEVEL
SAN FRANCISCO, CALIFORNIA

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THE RENT BOARD COMMISSIONERS INVITE THE PUBLIC TO COMMENT ON PROPOSED CHANGES TO THE RULES AND REGULATIONS GOVERNING THE RESIDENTIAL RENT STABILIZATION AND ARBITRATION ORDINANCE, CHAPTER 37 OF THE SAN FRANCISCO ADMINISTRATIVE CODE.

THE COMMISSION IS TAKING PUBLIC COMMENT ON THE LANGUAGE THAT FOLLOWS AMENDING SECTIONS 2.13 and 2.15. THE PROPOSED AMENDMENTS ARE INTENDED TO CLARIFY THE INTENT AND PURPOSE OF 2.13. SECTION 2.15 REFLECTS THE NEW PER DIEM RATE.

Rules and Regulations Section 2.13(a) and 2.15 are proposed to be amended as follows (strikethrough for deletions and double underline for additions):

Section 2.13 Board Meetings

(a) The Board shall meet on the first Tuesday of each month at ~~5:30~~ 6:00 p.m. at Room 70, Lower Level, 25 Van Ness Avenue, San Francisco, California, 94102 ~~or as otherwise designated by the Board~~; except (i) when that day falls on a legal holiday or election day, the meeting shall be held on the next Tuesday which is neither a legal holiday nor an election day, or (ii) when the Board designates an alternate date or place for the meeting, the meeting shall be held on the designated date and at the designated place.

(b) The Board shall meet at such other times as necessary to stay current with the workload or tend to administrative matters.

(c) Special meetings may be held any time, upon compliance with Charter provision 3.500.

(d) Meetings shall be open to the public, except that any member may require that matters for which meetings in executive session are allowed by law be discussed and considered in executive session, provided all votes of the

members shall be matters of public record.

(e) For purposes of testimony at Public Hearings before the Board, members of the public shall be limited to testimony of three minutes duration. The Board shall have the authority to waive this limitation at its discretion.

Section 2.15 Per Diem Compensation

(Amended September 21, 1999)

Each member shall receive ~~\$75.00~~ 100.00 for each Board meeting attended if the meeting lasts for three hours or more in a single twenty-four hour period, ~~\$50.00~~ 75.00 if the meeting lasts from one to three hours in a single twenty-four hour period, and ~~\$25.00~~ 50.00 if the meeting lasts one hour or less in a single twenty-four hour period. If a member or the alternate is not in attendance for an entire meeting, compensation shall be determined by reference to the actual aggregate time the member was in attendance.

jpg/pubhrgnot/2.13/2.15/3/04



SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

Tuesday, 6:00 p.m.,

March 9, 2004

25 Van Ness Avenue, #70, Lower Level

AGENDA

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DAVID GRUBER
DEBORAH HENDERSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- V. Consideration of Appeals

A. 405 Serrano Dr. #5D AT040007

The tenant appeals the dismissal of her hardship appeal due to her failure to appear at the properly noticed hearing.

B. 1830 Clay St. #103, 303, 402 & 403 AT040009 thru -12

The tenants in four units appeal the decision granting rent increases based on increased operating expenses on the grounds of financial hardship.

C. 345 Jones St. #401 AT040014

The tenants in one unit appeal the decision certifying capital improvement costs on the grounds of financial hardship.

D. 600 - 24th Ave. #4 AT040008

The tenant appeals the decision partially granting claims of decreased housing services.

E. 1266 - 20th Ave. AT040013

The tenant appeals the remand decision denying claims of decreased housing services.

- VI. Communications



VII. Director's Report

VIII. Old Business

Proposed Amendments to Rules and Regulations Section 4.11
Regarding PG&E Passthroughs

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

IX. New Business

Proposed Amendments to Rules and Regulations Sections 2.13 and 2.15

X. Calendar Items

XI. Adjournment

ACCESSIBLE MEETING POLICY

American sign language interpreters will be available upon request. Please contact the Rent Board at 252-4648 at least 72 hours prior to the meeting. Late requests will be honored if possible. Translation services, sound enhancement or alternative formats are available if requested at least 72 hours prior to the meeting. Call 252-4641 to place your specific request.

會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4641。

Se pueden obtener servicios de traducción, ampliación de sonido, u otras formas de presentación si se solicitan por lo menos 72 horas antes de la reunión. Llame al 252.4641 para hacer su solicitud.

"Individuals with severe allergies, environmental illness, multiple chemical sensitivity or relate disabilities should call our accessibility hotline at (415) 554-8925 to discuss meeting accessibility. In order to assist the City's efforts to accommodate such people, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals."

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There is accessible parking available on adjacent streets (Oak Street and Hickory). Metered street parking is also available.

Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Ray Cabezas, has been designated to coordinate and carry out this agency's compliance with the nondiscrimination requirement of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided thereunder, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845,

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force at 554-4851.



SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,

Tuesday, March 9, 2004 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

GAVIN NEWSOM
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

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I. Call to Order

President Wasserman called the meeting to order at 6:15 p.m.

II. Roll Call

Commissioners Present:

Becker; Gruber; Justman; Lightner; Marshall;
Mosbrucker; Murphy; Wasserman.

Commissioners not Present:

Henderson; Mosser.

Staff Present:

Gartzman; Grubb; Wolf.

III. Approval of the Minutes

MSC: To approve the Minutes of February 17, 2004.
(Becker/Lightner: 5-0)

IV. Remarks from the Public

A. Ernestine Weiss spoke on behalf of the tenants at the Golden Gateway complex, saying that there are "too many passthroughs" and that the PG&E passthrough should be excised completely. Ms. Weiss believes that PG&E passthroughs constitute "double-dipping", since PG&E costs are included in the annual increase the landlord is entitled to each year. Ms. Weiss feels that the elderly are particularly affected.

B. Robert Pender of the Parkmerced Residents' Organization (PRO) distributed copies of the Tenant Times. Mr. Pender informed the Board that he received 5,000 votes in his run for the Democratic Central Committee, which he feels is recognition for all the work he has done over the years. Mr. Pender admitted that he is relieved that he didn't get elected. Mr. Pender also told the Board that PRO is 30 years old and the oldest tenant organization in San Francisco. He expressed his support for the tenant appellant at 405 Serrano Drive (AT040007).

V. Consideration of Appeals

A. 405 Serrano Dr. #5D

AT040007

The landlord's petition for certification of capital improvement costs was granted. The tenant's appeal on the grounds of financial hardship was accepted and remanded for hearing. The tenant failed to appear at the remand hearing and her appeal was dismissed. On appeal, the tenant claims not to have received notice of the hearing, and attaches the requisite Declaration of Non-Receipt of Notice of Hearing.

MSC: To recuse Commissioner Becker from consideration of this appeal.
(Marshall/Justman: 5-0)

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Marshall/Mosbrucker: 5-0)

B. 1830 Clay St. #103, 303, 402 & 403

AT040009 thru -12

The landlords' petition for rent increases based on increased operating expenses was granted, resulting in 7% rent increases for 11 out of 21 units. The tenants in four units appeal the decision on the grounds of financial hardship.

MSC To accept the appeal of the tenant in unit #103 and schedule a hearing on the tenant's claim of financial hardship. (Becker/Marshall: 3-2; Gruber, Lightner dissenting)

MSC To accept the appeal of the tenant in unit #303 and schedule a hearing on the tenant's claim of financial hardship.
(Becker/Marshall: 3-2; Gruber, Lightner dissenting)

The tenant in unit #402 indicated that there are two adult occupants in the unit, but did not furnish a Hardship Application for her husband, because she said he refused to cooperate. The tenant indicated that she did not wish to proceed at this time. The Board considers this appeal to have been withdrawn. If the tenant provides the requested documentation within a reasonable period of time, the appeal may be reopened.

On her Hardship Application, the tenant in unit #403 indicated that she had been unemployed, but would be starting a new job in February. Since no current income information was provided, the Commissioners continued consideration of this appeal in order for staff to contact the tenant and obtain additional information regarding her financial status.

C. 345 Jones St. #401

AT040014

The tenants' appeal was filed almost eight months late because the tenants allege that they did not receive a copy of the Decision of Administrative Law Judge, and English is not their native language.

MSC: To find good cause for the late filing of the appeal.
(Becker/Marshall: 5-0)

The landlords' petition for certification of capital improvement costs to 25 of 30 units was granted. Two tenants in one unit appeal the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenants' claim of financial hardship. (Becker/Marshall: 4-1; Gruber dissenting)

D. 600 – 24th Ave. #4

AT040008

Four tenant petitions alleging decreased housing services were granted, in part. One tenant appeals the decision, claiming that: the decision is in error as to the number of problematic windows she has in her unit; the decision is incorrect regarding the dates that the landlord received notice from the tenant as to the defective windows; the decision states that the windows have been reglazed when they have not; the tenant notified the landlord as to the maintenance and upkeep problems in the building as early as 1997; and the landlord was on notice regarding the peeling paint pursuant to a letter dated December 2, 1998.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a hearing on the issue of the broken windows and to determine whether the mildew in the living room could have been exacerbated by leaking windows in the living room, if any. (Marshall/Becker: 3-2; Gruber, Lightner dissenting)

E. 1266 – 20th Ave.

AT040013

The tenant's petition was partially granted as to claims of decreased housing services, and the landlord was found liable to the tenant in the amount of \$1,183.50. Claims regarding the front gate and entry door were denied due to lack of notice to the landlord. The tenant's appeal was accepted and remanded in order for the Administrative Law Judge to make Findings and Conclusions on the issue of constructive notice regarding the gate and front entry door. In the Decision on Remand, the Administrative Law Judge found that the gate and front entry door appeared to be in good repair from the photographic evidence, and determined that there was no constructive notice to the landlord of any defects. The tenant appeals the remand decision, claiming that: the Administrative Law Judge exhibited bias towards the landlord, including giving greater weight to the testimony of the property manager than the Declaration of the tenant's witness; the landlord performed almost no maintenance over a twelve-year period, which should lend credence to the tenant's assertions regarding defects on the premises; the photographic evidence does, in fact, show the existence of defects; and the property manager's testimony at the hearing is not credible.

MSC: To deny the appeal. (Justman/Gruber: 3-2; Becker, Marshall dissenting)

VI. Communications

The Board received the following communications:

- A. The departmental budget for the fiscal year 2004-2005.
- B. An article from The Recorder regarding Gary Near, an appellant in a prior case before the Board.
- C. A letter from landlord Bill Quan regarding proposed amendments to Rules Section 4.11.

VII. Director's Report

Executive Director Grubb went over the proposed departmental budget with the Commissioners. The budget for fiscal year 2004-2005 shows a net reduction of

\$377,000, which constitutes an 8% decrease from this year's budget. This figure includes a 5% reserve in the City Attorney and Temporary Salaries categories.

VIII. Old Business

A. Proposed Amendments to Rules and Regulations Section 4.11 Regarding PG&E Passthroughs

The Board continued their discussion of proposed amendments to Rules Section 4.11 with Senior Administrative Law Judge Sandy Gartzman. The Board agreed on the following additional changes to the proposal: passthroughs that are currently in effect shall be discontinued 12 months from imposition or 60 days from the effective date of the proposed amendments; page 4, line 2 shall be changed to reflect that the landlord shall deduct user fee income for the laundry facilities actually received by the landlord from a third party vendor from the total utility costs for the building, or, where no third party vendor is used to operate the laundry facility, 50% of the income actually received by the landlord shall be deducted; and page 4, line 6 shall state that where laundry facilities are not separately metered and not available and not for the benefit of the tenant, the landlord may not pass through any increase in the building's utilities to that tenant. Ms. Gartzman will draft the additional changes for discussion at the March 23rd Board meeting.

IV. Remarks from the Public (cont.)

C. Robert Pender told the Board that there are 3,500 units in the Parkmerced complex, that not every block has a laundry room and that lights in the laundry rooms are left on 24 hours a day. Mr. Pender feels that the Board is "making sausage" in that the proposed amendments to Rules Section 4.11 are "a can of worms," very complicated and "won't be fair to either side." Mr. Pender is going to inform the Board of Supervisors of his feelings about this issue.

IX. New Business

The Board briefly discussed proposed changes to Rules and Regulations Sections 2.13 and 2.15 which would make it not mandatory for the Board to meet on the first Tuesday of the month and increase the amount of the Commissioners' per diem compensation and voted as follows:

MSC: To put the proposed changes to Rules and Regulations Sections 2.13 and 2.15 out for Public Hearing. (Gruber/Justman: 5-0)

X. Calendar Items

March 16, 2004 - NO MEETING

March 23, 2004

8 appeal considerations (1 cont. from 3/9/04)

Public Hearing: Proposed Amendments to Rules Sections 2.13 and 2.15

Old Business: Proposed Amendments to Rules Section 4.11

XI. Adjournment

President Wasserman adjourned the meeting at 8:21 p.m.



SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,

Tuesday, 6:00 p.m.,
March 23, 2004
25 Van Ness Avenue, #70, Lower Level

GAVIN NEWSOM
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

AGENDA

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- LARRY BEACH BECKER
- DAVID GRUBER
- DEBORAH HENDERSON
- ANTHONY JUSTMAN
- MERRIE T. LIGHTNER
- CATHY MOSBRUCKER
- NEVEO MOSSER
- BARTHOLOMEW MURPHY

- I. Call to Order
- ii. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

MAR 16 2004

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NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations,
members of the public shall be limited to comments of no more
than 3 minutes' duration.

- V. Consideration of Appeals

A. 72 Gough St. #8 AT040017 & -18

The tenant appeals two decisions certifying capital improvement costs
on the grounds of financial hardship.

B. 851 Brussels St. #1 AL040015

The landlord appeals the decision granting rent reductions due to
decreased housing services.

C. 163 San Carlos St. #A AL040016

The landlord appeals the decision granting rent reductions due to
decreased housing services and refunding rent overpayments due to an
unlawful rent increase.

D. 29 B Camellia Ave. AL040019

The landlord appeals the decision granting rent reductions due to
decreased housing services.

E. 289 Connecticut AL040020

The landlord appeals the decision denying a petition for rent increase
based on increased operating expenses.

F. 640 Clay St. #336 AL040021

The landlord appeals the decision granting rent reductions due to decreased housing services, asserting the Golden Gateway decision.

G. 2124 Hyde St. #3

AT040022

The tenants appeal the decision granting a claim of decreased housing services due to the conversion from landlord-paid steam heat to tenant-paid electric heat.

VI. Public Hearing

6:30 Proposed Amendments to Rules and Regulations Sections 2.13 and 2.15

VII. Communications

VIII. Director's Report

IX. Old Business

Proposed Amendments to Rules and Regulations Section 4.11
Regarding PG&E Passthroughs

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

X. New Business

XI. Calendar Items

XII. Adjournment

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**AMENDED NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM
MAYOR

SHARON K. WASSERMAN
PRESIDENT

JOSEPH GRUBB
EXECUTIVE DIRECTOR

POLLY MARSHALL
VICE-PRESIDENT

Tuesday, 6:00 p.m.,
March 23, 2004
25 Van Ness Avenue, #70, Lower Level

AGENDA

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MAR 15 2004

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ANTHONY JUSTMAN
MERRIE T. LIGHTNER
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations,
members of the public shall be limited to comments of no more
than 3 minutes' duration.

- V. Consideration of Appeals

A. 72 Gough St. #8 AT040017 & -18

The tenant appeals two decisions certifying capital improvement costs
on the grounds of financial hardship.

B. 851 Brussels St. #1 AT040015

The landlord appeals the decision granting rent reductions due to
decreased housing services.

C. 163 San Carlos St. #A AL040016

The landlord appeals the decision granting rent reductions due to
decreased housing services and refunding rent overpayments due to an
unlawful rent increase.

D. 29 B Camellia Ave. AL040019

The landlord appeals the decision granting rent reductions due to
decreased housing services.

E. 289 Connecticut AL040020

The landlord appeals the decision denying a petition for rent increase
based on increased operating expenses.

F. 640 Clay St. #336 AL040021



The landlord appeals the decision granting rent reductions due to decreased housing services, asserting the Golden Gateway decision.

G. 2124 Hyde St. #3

AT040022

The tenants appeal the decision granting a claim of decreased housing services due to the conversion from landlord-paid steam heat to tenant-paid electric heat.

H. 1830 Clay St. #403

AT040012

(cont. from 3/9/04)

One tenant appeals the decision granting rent increases based on increased operating expenses on the grounds of financial hardship.

VI. Public Hearing

6:30 Proposed Amendments to Rules and Regulations Sections 2.13 and 2.15

VII. Communications

VIII. Director's Report

IX. Old Business

Proposed Amendments to Rules and Regulations Section 4.11
Regarding PG&E Passthroughs

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

X. New Business

XI. Calendar Items

XII. Adjournment



GAVIN NEWSOM
MAYOR

March 8, 2004

JOSEPH GRUBB
EXECUTIVE DIRECTOR

SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

NOTICE OF PUBLIC HEARING

DATE: March 23, 2004

TIME: 6:30 P.M.

PLACE: 25 VAN NESS AVENUE (AT MARKET ST.)
SUITE 70, LOWER LEVEL
SAN FRANCISCO, CALIFORNIA

LARRY BEACH BECKER
DAVID GRUBER
DEBORAH HENDERSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

THE RENT BOARD COMMISSIONERS INVITE THE PUBLIC TO COMMENT ON PROPOSED CHANGES TO THE RULES AND REGULATIONS GOVERNING THE RESIDENTIAL RENT STABILIZATION AND ARBITRATION ORDINANCE, CHAPTER 37 OF THE SAN FRANCISCO ADMINISTRATIVE CODE.

THE COMMISSION IS TAKING PUBLIC COMMENT ON THE LANGUAGE THAT FOLLOWS AMENDING SECTIONS 2.13 and 2.15. THE PROPOSED AMENDMENTS ARE INTENDED TO CLARIFY THE INTENT AND PURPOSE OF 2.13. SECTION 2.15 REFLECTS THE NEW PER DIEM RATE.

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1 Rules and Regulations Section 2.13(a) and 2.15 are proposed to be amended as follows
2
3 (striketrough for deletions and double underline for additions):

4 **Section 2.13 Board Meetings**

5
6 (a) The Board shall meet on the first Tuesday of each month at 5:30 6:00 p.m. at
7 Room 70, Lower Level, 25 Van Ness Avenue, San Francisco, California, 94102 ~~or as~~
8 ~~otherwise designated by the Board;~~ except (i) when that day falls on a legal holiday or
9 election day, the meeting shall be held on the next Tuesday which is neither a legal holiday
10 nor an election day, or (ii) when the Board designates an alternate date or place for the
11 meeting, the meeting shall be held on the designated date and at the designated place.
12

13 (b) The Board shall meet at such other times as necessary to stay current with the
14 workload or tend to administrative matters.

15 (c) Special meetings may be held any time, upon compliance with Charter
16 provision 3.500.

17 (d) Meetings shall be open to the public, except that any member may require that
18 matters for which meetings in executive session are allowed by law be discussed and
19 considered in executive session, provided all votes of the members shall be matters of public
20 record.
21

22 (e) For purposes of testimony at Public Hearings before the Board, members of the
23 public shall be limited to testimony of three minutes duration. The Board shall have the
24 authority to waive this limitation at its discretion.
25
26
27
28

Section 2.15 Per Diem Compensation

(Amended September 21, 1999)

Each member shall receive ~~\$75.00~~ 100.00 for each Board meeting attended if the meeting lasts for three hours or more in a single twenty-four hour period, ~~\$50.00~~ 75.00 if the meeting lasts from one to three hours in a single twenty-four hour period, and ~~\$25.00~~ 50.00 if the meeting lasts one hour or less in a single twenty-four hour period. If a member or the alternate is not in attendance for an entire meeting, compensation shall be determined by reference to the actual aggregate time the member was in attendance.



SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, March 23, 2004 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

GAVIN NEWSOM
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

DOCUMENTS DEPARTMENT

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LARRY BEACH BECKER I. Call to Order

DAVID GRUBER
DEBORAH HENDERSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

President Wasserman called the meeting to order at 6:12 p.m.

II. Roll Call

Commissioners Present:

Becker; Gruber; Henderson; Justman;
Lightner; Marshall; Mosbrucker; Mosser;
Wasserman.
Gartzman; Grubb; Wolf.

Staff Present:

Commissioner Murphy appeared on the record at 6:27 p.m.

President Wasserman convened the meeting by noting that it was Executive Director Grubb's last meeting prior to retirement. Ms. Wasserman extolled Mr. Grubb's virtues, stating that "there is no better executive anywhere," and noting what a great loss this is to the agency, the Commission, and the public. Her fellow Commissioners concurred.

III. Approval of the Minutes

MSC: To approve the Minutes of March 9, 2004.
(Becker/Gruber: 5-0)

IV. Remarks from the Public

A. Robert Pender of the Parkmerced Residents' Organization (PRO) told the Board that he supports the proposed amendments to Rules Section 2.13, but opposes the changes to Sections 2.15 and 4.11 because he feels that it will "worsen the relationship between tenants and landlords." Mr. Pender suggested that a Task Force be convened.

B. John B. F. Smith told the Commissioners that wife-beaters have impunity to beat their wives and the police don't do anything.

C. Tenant Beatrice Wahlbeck spoke regarding Rules and Regulations Section 4.11 as follows: the methodology doesn't take into account that the passthrough can be based on erroneous figures, such as when additional washers and dryers are installed in the comparison year; the landlord's income from laundry facilities on the premises needs to be verified; utility bills for work on vacant apartments should be deducted; the size of a unit should be immaterial; and a passthrough that is disallowed for one tenant should be disallowed for all tenants in the building.



V. Consideration of Appeals

A. 72 Gough St. #8

AT040017 & -18

The landlord filed two petitions seeking certification of capital improvement costs, which were granted. The tenant in one unit appeals both decisions on the grounds of financial hardship.

MSC: To accept the appeals and remand the cases for a hearing on the tenant's claim of financial hardship. (Becker/Marshall: 5-0)

B. 851 Brussels St. #1

AT040015

The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$1,457.50 due to lack of heat and loss of a storage shed. The landlord appeals the portion of the decision pertaining to the storage shed, alleging that: the tenant's rental includes use of a subterranean storage unit, rather than the first floor storage unit that belongs to the upstairs tenant; the water leak affected only the ground level storage shed, and not the tenant's storage space; and, since the usable area in both spaces is the same, the amount of the rent reduction should be reduced by half.

MSC: To deny the appeal. (Marshall/Becker: 3-2; Gruber, Lightner dissenting)

C. 163 San Carlos St. #A

AL040016

The tenant's petition alleging unlawful rent increases and decreased housing services was granted, in part. The landlord was found liable to the tenant in the amount of \$16,800.00 for rent overpayments and \$210 due to a leaking toilet. On appeal, the landlord maintains that: upon remodeling of the tenant's kitchen and bathroom, a new tenancy was created at a higher rent, as reflected in a renegotiated lease; Ordinance Section 37.3(a)(1) does not prohibit a tenant from waiving their rights under the Ordinance and all parties may enter into agreements freely and voluntarily; and any overpayments should be recalculated on an adjusted base rent of \$990.00, the amount agreed to by the tenant for the new tenancy.

MSC: To deny the appeal except to remand the case to the Administrative Law Judge for necessary Technical Corrections to the Decision. (Becker/Marshall: 5-0)

D. 29 B Camellia Ave.

AL040019

The tenant's petition alleging decreased housing services was granted, in part, and the landlords were found liable to the tenant in the amount of \$5,500.00 due to lack of heat in the unit. On appeal, the landlords claim that a judgment after trial by court was entered against the tenant on December 15, 2003, almost two months before the Decision of Administrative Law Judge was issued.

MSC: To deny the appeal. (Becker/Marshall: 5-0)

E. 289 Connecticut

AL040020

The landlord's petition for a rent increase based on increased operating expenses was denied because the Administrative Law Judge found that the increase was based only on repairs that were extraordinary, rather than routine, which created exaggerated results. On appeal, the landlord argues that: the calculation periods were not selected to create exaggerated results; the repairs were routine, and not extraordinary; and the burden of proof was met with regard to electrical repair work performed in December, 2002.

After discussion, this case was continued in order to obtain a Memorandum from the Administrative Law Judge regarding her reasons for finding exaggerated results.

F. 640 Clay St. #336

AL040021

The tenant's petition alleging decreased housing services was denied except as to a \$9.00 rent reduction for twice monthly disruptions in water service to the building, a residential hotel. On appeal, the landlord asserts that: the Order in the case is vague, overbroad and contrary to the Golden Gateway decision; and the landlord should not be penalized for making emergency repairs or for slight service interruptions which do not affect the tenant.

MSC: To recuse Commissioners Mosser and Mosbrucker from consideration of this appeal. (Gruber/Lightner: 5-0)

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the record to clarify that the rent reduction only applies to days when the service is not provided; and to attach reasonable parameters to when the rent reduction will be granted, e.g., when there has been no notice of an anticipated disruption in water service, when the disruption is of some duration, and/or when the disruptions have been occurring with some frequency. (Marshall/Justman: 5-0)

G. 2124 Hyde St. #3

AT040022

The tenants' petition alleging a decrease in services due to the conversion from landlord-paid steam heat to tenant-paid electric heat was granted. However, the Administrative Law Judge found that the tenants were being over-compensated by deducting an amount authorized in a prior mediated agreement, and the tenants were ordered to make the appropriate adjustment to the landlord. The tenants appeal, claiming that the Administrative Law Judge erred in his calculations in the following ways: the kilowatt hours per month was based on the tenant's presently discounted rate, which could change at any time; and the calculation should be based on the kilowatt hours used by the heater that was actually installed, rather than the wattage that is required under the Housing Code.

MSF: To accept the appeal and remand the case to provide that the tenants can re-open the case at any time if they no longer qualify for the CARE rate; and to base the rent reduction on the kilowatt-hours used by the heater that was provided, rather than what was required. (Marshall/Becker: 2-3; Gruber, Lightner, Justman dissenting)

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the record only to provide that the tenants can re-

open the case at any time if they no longer qualify for the CARE rate. (Lightner/Gruber: 4-1; Marshall dissenting)

H. 1830 Clay St. #403

AT040012
(cont. from 3/9/04)

The landlords' petition for rent increases based on increased operating expenses was granted, resulting in 7% rent increases for 11 out of 21 units. The tenant in unit #403 appealed the decision on the grounds of financial hardship. However, on her Hardship Application, the tenant indicated that she had been unemployed, but would be starting a new job in February. Since no current income information was provided, the Commissioners continued consideration of this appeal in order for staff to contact the tenant and obtain additional information regarding her financial status.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to allow the tenant to pay the retroactive amounts owed in installments; a hearing will be held only if necessary. (Marshall/Gruber: 5-0)

VI. Public Hearing

Proposed Amendments to Rules and Regulations Sections 2.13 and 2.15

A Public Hearing commenced at 7:24 p.m. and concluded at 7:26 p.m. Only Robert Pender of PRO spoke, and he reiterated his support for the changes to Section 2.13, and his opposition to the amendment of Sections 2.15 and 4.11.

MSC: To adopt the proposed changes to Rules and Regulations Sections 2.13 and 2.15. (Lightner/Gruber: 5-0)

With the amendments, the sections now read as follows below:

Section 2.13 Board Meetings

(a) The Board shall meet on the first Tuesday of each month at 5:30 6:00 p.m. at Room 70, Lower Level, 25 Van Ness Avenue, San Francisco, California, 94102 or as otherwise designated by the Board; except (i) when that day falls on a legal holiday or election day, the meeting shall be held on the next Tuesday which is neither a legal holiday nor an election day, or (ii) when the Board designates an alternate date or place for the meeting, the meeting shall be held on the designated date and at the designated place.

(b) The Board shall meet at such other times as necessary to stay current with the workload or tend to administrative matters.

(c) Special meetings may be held any time, upon compliance with Charter provision 3.500.

(d) Meetings shall be open to the public, except that any member may require that matters for which meetings in executive session are allowed by law be discussed and considered in executive session, provided all votes of the members shall be matters of public record.

(e) For purposes of testimony at Public Hearings before the Board, members of the public shall be limited to testimony of three minutes duration. The Board shall have the authority to waive this limitation at its discretion.

Section 2.15 Per Diem Compensation

Each member shall receive \$100.00 for each Board meeting attended if the meeting lasts for three hours or more in a single twenty-four hour period; \$75.00 if the meeting lasts from one to three hours in a single twenty-four hour period; and \$50.00 if the meeting lasts one hour or less in a single twenty-four hour period. If a member or the alternate is not in attendance for an entire meeting, compensation shall be determined by reference to the actual aggregate time the member was in attendance.

VII. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. Form 700 (Statement of Economic Interests), which is due April 1st.

B. An e-mail from Senior Administrative Law Judge Tim Lee regarding the case of Morgan v. City of Chino.

VIII. Director's Report

Deputy Director Wolf informed the Board that the case of Rossoff v. Rent Board has been settled.

Executive Director Grubb reported as follows:

- A. The agency is close to having the Decisions of its Administrative Law Judges available on the kiosk at the front counter.
- B. Robert Collins has been the Acting Rent Board Supervisor since Pedro Ruiz retired. Robert's counselor position will be left vacant until the Rent Board Supervisor position is permanently filled.
- C. Opinions requested from the Office of the City Attorney on the issues of the applicability of the Cwyner Decision and AB 647 are in the works.

Mr. Grubb then said farewell to the Commission, remarking on what a great experience it had been working with them. He commended them on their professionalism, especially considering the adversarial nature built in to the composition of the Rent Board. Mr. Grubb's comments were heart-felt, and there wasn't a dry eye in the house.

IX. Old Business

Proposed Amendments to Rules & Regulations Section 4.11 Regarding PG&E Passthroughs

With Senior Administrative Law Judge Sandy Gartzman, the Board continued their discussion of additional changes to proposed amendments to Rules and Regulations Section 4.11. Ms. Gartzman explained that the requirement that passthroughs in effect on the effective date of the amendments be discontinued after twelve months has been put in the introductory paragraph, so that the text of Section 4.11 could remain unchanged. Pursuant to a question from Commissioner Marshall, Ms. Gartzman said that she believes that the proposed regs. provide sufficient "wiggle room" in the event that additional laundry appliances are added at a later date. Lastly, Ms. Gartzman informed the Board that storage spaces have been deleted from the building's room count for purposes of calculation of the passthrough. The Board then voted as follows below:

MSC: To put out for Public Hearing proposed changes to Rules and Regulations Section 4.11: both Version 1, without indexing, and Version 2, which includes indexing, shall be put out.
(Marshall/Becker: 3-2; Gruber, Lightner dissenting)

IV. Remarks from the Public (cont.)

- D. Laura Traveler, President of PRO, thanked Mr. Grubb for his many kindnesses and the leadership and patience he has demonstrated over the years.
- E. Robert Pender of PRO once again stated his support for the changes to Rules Section 2.13, and opposition to the changes to Section 2.15 and proposed changes to Section 4.11. Mr. Pender told the Board that Parkmerced didn't list the laundry room on his block on their inventory; that there are other "errors of omission and commission"; and that "something needs to be done to correct the record."

X. Calendar Items

March 30th, April 6th, & April 13th, 2004 - NO MEETINGS

April 20, 2004

6:30 6 appeal considerations (1 cont. from 3/23/04)
Public Hearing: Proposed Amendments to Rules Section 4.11
Old Business: Applicability of Cwynar Decision

XI. Adjournment

President Wasserman adjourned the meeting at 7:50 p.m.



SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

Tuesday, 6:00 p.m.,
April 20, 2004
25 Van Ness Avenue, #70, Lower Level

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AGENDA

- LARRY BEACH BECKER I. Call to Order
DAVID GRUBER
DEBORAH HENDERSON II. Roll Call
ANTHONY JUSTMAN
MERRIE T. LIGHTNER III. Approval of the Minutes
CATHY MOSBRUCKER
NEVEO MOSSEY IV. Remarks from the Public
BARTHOLOMEW MURPHY

V. Consideration of Appeals

A. 383a Elsie St. AT040023

One tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

B. 1096 Pine St. #303 AT040029

The tenant appeals the remand decision denying his financial hardship claim.

C. 354 San Carlos St. AT040024

The tenant appeals the decision denying her claim of decreased housing services.

D. 3042 Sacramento #4 AL040028

The Master Tenants appeal the decision granting a claim that they charged an initial base rent in excess of the amount they were paying to the landlord.

E. 1550 Bay St. #A206 AL040030

The landlord appeals the decision granting a claim of decreased housing services.

F. 289 Connecticut AL040020
(cont. from 3/23/04)



The landlord appeals the decision denying a rent increase based on increased operating expenses.

VI. Public Hearing

6:30 Proposed Amendments to Rules and Regulations Section 4.11
Regarding PG&E Passthroughs

VII. Communications

VIII. Director's Report

IX. Old Business

Applicability of Cwyner Decision

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

X. New Business

XI. Calendar Items

XII. Adjournment

ACCESSIBLE MEETING POLICY

American sign language interpreters will be available upon request. Please contact the Rent Board at 252-4648 at least 72 hours prior to the meeting. Late requests will be honored if possible. Translation services, sound enhancement or alternative formats are available if requested at least 72 hours prior to the meeting. Call 252-4641 to place your specific request.

會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4641。

Se pueden obtener servicios de traducción, ampliación de sonido, u otras formas de presentación si se solicitan por lo menos 72 horas antes de la reunión. Llame al 252.4641 para hacer su solicitud.

"Individuals with severe allergies, environmental illness, multiple chemical sensitivity or relate disabilities should call our accessibility hotline at (415) 554-8925 to discuss meeting accessibility. In order to assist the City's efforts to accommodate such people, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals."

Rent Board Commission meetings are held at 25 Van Ness Avenue, Suite 70, lower level, and are wheelchair accessible. The closest accessible BART station is located at Civic Center. Accessible MUNI lines serving this location are the 42 Downtown Loop, the 71 Haight/Noriega and the MUNI Metro at Van Ness and Market Street. For information about MUNI accessible services call 923-6142.

There is accessible parking available on adjacent streets (Oak Street and Hickory). Metered street parking is also available.

Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Ray Cabezas, has been designated to coordinate and carry out this agency's compliance with the nondiscrimination requirement of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided thereunder, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845,

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force at 554-4851.

San Francisco
= Rental Board Rent 2004-2005
Arbitration 2004

March 30, 2004

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NOTICE OF PUBLIC HEARING

SAN FRANCISCO
PUBLIC LIBRARY

DATE: April 20, 2004

TIME: 6:30 P.M.

PLACE: 25 VAN NESS AVENUE (AT MARKET ST.)
SUITE 70, LOWER LEVEL
SAN FRANCISCO, CALIFORNIA

THE RENT BOARD COMMISSIONERS INVITE THE PUBLIC TO COMMENT ON PROPOSED CHANGES TO THE RULES AND REGULATIONS GOVERNING THE RESIDENTIAL RENT STABILIZATION AND ARBITRATION ORDINANCE, CHAPTER 37 OF THE SAN FRANCISCO ADMINISTRATIVE CODE.

THE COMMISSION IS TAKING PUBLIC COMMENT ON THE LANGUAGE THAT FOLLOWS AMENDING SECTIONS 1.19, 4.11 and 10.12 AND ADDING SECTIONS 6.16 and 10.13. The proposed amendments are intended to provide a more accurate methodology for calculating utility passthroughs and require the landlord to file a petition for Rent Board approval of a proposed utility passthrough before it is imposed. There are two versions of the proposed amendments, which are identical in all respects except for the specific calculation methodology set forth in new Section 6.16(h). Version 1 provides for a calculation methodology "without indexing" of the base year utility cost. Version 2 provides for a calculation methodology "with indexing" of the base year utility cost and requires an adjustment of the base year utility cost to reflect a constant dollar value with the comparison year.

1 PROPOSED AMENDMENTS TO THE RENT BOARD RULES AND
2 REGULATIONS REGARDING UTILITY PASSTHROUGHS

3 -VERSION 1 (without indexing) -

4 *[additions in underline; deletions in strikethrough]*

5
6 *- Amend Section 1.19 to reference new Section 6.16 as well as Section 4.11. Also amend the*
7 *reference to Ordinance Section 37.2(o) to reflect the correct section of 37.2(q).*

8 **Section 1.19 Tenant's Utilities**

9 For the purpose of Ordinance Section 37.2~~(e)~~ (q) and Sections 4.11 and 6.16
10 of these Rules, "Tenant's Utilities" means charges for natural gas or electricity provided
11 by Pacific Gas and Electric Company directly to the unit occupied by the tenant or to
12 the building in which the unit is located and benefiting the tenant, whether paid by the
13 tenant alone, by the landlord alone, or part by the tenant and part by the landlord.

14
15
16 *- Amend Section 4.11 by adding the following language to the beginning of Section 4.11:*

17 **Section 4.11 Computation of Passthrough of Gas and Electricity**

18 The following provisions shall apply to utility passthroughs where the notice of
19 rent increase for the utility passthrough was served prior to [the effective date of
20 Section 6.16], except that with respect to utility passthroughs that are in effect on
21 [the effective date of Section 6.16], such a utility passthrough shall be discontinued
22 twelve months after it was imposed or by [60 days after the effective date of Section
23 6.16], whichever is later.

24 {NOTE: Text of Section 4.11 to remain the same}

1
2 – Add the following new Section 6.16:

3 **Section 6.16 Utility Passthrough**

4 The following provisions shall apply to utility passthroughs where the notice of
5 rent increase for the utility passthrough was served on or after [the effective date of
6 Section 6.16]:

7 (a) Where a landlord pays for gas, electricity and/or steam provided directly
8 to the unit occupied by the tenant and/or to the common areas of the property in
9 which the unit is located, and seeks to recover the increase in the cost of these utilities
10 from the tenant, the landlord must file a petition for approval of the utility passthrough
11 on a form prescribed by the Board. The petition shall specify the units on the property
12 that are subject to the petition. The petition will be decided without a hearing unless
13 the Administrative Law Judge determines that a hearing is required.

14 (b) For all tenancies existing on December 31, 2003, the “base year” for
15 purposes of this section shall be calendar year 2002, except that where there is a
16 utility passthrough in effect for the tenancy on [the effective date of this amendment]
17 and the base year for that passthrough was properly determined pursuant to Section
18 4.11 of these Rules, the landlord may continue to use that tenant’s same base year for
19 future utility passthrough calculations. For all new tenancies commencing after
20 December 31, 2003, the “base year” shall be the calendar year immediately preceding
21 the inception of the tenancy. However, a landlord may petition the Board for approval
22 of an alternate base year if the landlord became an owner of record after December
23 31, 2002 and can demonstrate a good faith, but unsuccessful, effort to obtain the
24 base year utility costs specified in this subsection. An alternate base year that creates
25 exaggerated results will not be approved unless the proposed alternate base year
26 coincides with the landlord’s first full calendar year of ownership. Different tenants in

1 the same property may have different base years depending on when they moved into
2 the property and whether the Rent Board has approved an alternate base year. The
3 base year will remain the same for all future utility passthrough calculations for any
4 tenant.

5 (c) For purposes of this section, the "comparison year" in all cases shall be
6 the calendar year immediately preceding the filing of the landlord's petition for
7 approval of the utility passthrough.

8 (d) The landlord must file a petition before giving legal notice of a rent
9 increase for a utility passthrough. The petition must be filed no more than twelve
10 months after the "comparison year" listed in the petition. The notice shall be in
11 conformance with the requirements set forth in Section 4.10 above and shall further
12 include the dollar amount requested for the utility passthrough. This passthrough shall
13 be inoperative unless and until the petition is approved by the Administrative Law
14 Judge. Any amounts approved by the Administrative Law Judge shall relate back to the
15 effective date of the legal notice, if given. A landlord may choose instead not to serve
16 legal notice of a proposed utility passthrough until after the decision of the
17 Administrative Law Judge is rendered. In any event, no rent increase approved by the
18 Administrative Law for a utility passthrough shall become effective until the tenant's
19 anniversary date.

20 (e) No landlord may pass through any increase in the cost of utilities to a
21 tenant until the tenant has occupied one or more units in the subject property for one
22 continuous year.

23 (f) Where the utility bills include the cost of gas and/or electricity for laundry
24 facilities and the landlord charges a user fee for the laundry facilities, the landlord may
25 not pass through any increase in the building's cost of utilities unless the landlord
26 complies with one of the following:

(i) where the laundry facilities are separately metered in both the base year and comparison year, the landlord shall not include the utility costs for the laundry facilities in the utility passthrough calculation; or

(ii) where the laundry facilities are not separately metered in both the base year and the comparison year and there is a third party vendor that collects the user fees from the laundry facilities, the landlord shall deduct the net income actually received by the landlord from the third party vendor from the total utility costs for the building; or

(iii) where the laundry facilities are not separately metered in both the base year and the comparison year and there is not a third party vendor that collects the user fees from the laundry facilities, the landlord shall deduct 50% of the user fees actually collected by the landlord from the total utility costs for the building.

(g) Where the utility bills include the cost of gas and/or electricity for laundry facilities and the laundry facilities are not available to or operated for the benefit of the tenant, and the laundry facilities are not separately metered in both the base year and comparison year, the landlord may not pass through to that tenant any increase in the building's cost of utilities.

(h) The landlord shall calculate the amount of the utility passthrough as follows:

(i) Compile the utility bills for the “base year” and the “comparison year” as defined in subsections (b) and (c) above.

(ii) Calculate the total utility cost for the comparison year and the total utility cost for the base year. The utility passthrough shall be based on actual costs incurred by the landlord during the relevant calendar years, regardless of when the utility bill was received or paid.

(iii) Subtract the base year utility cost from the comparison year utility cost to get the utility cost increase. If there is no increase or if there has been a decrease, no passthrough is allowed.

(iv) Divide the resulting figure, if greater than zero, by twelve (12) to determine the average monthly utility increase for the entire property.

(v) Divide the average monthly utility increase by the number of rooms in the property to get the amount of the utility passthrough that may be imposed for each room. For purposes of this section, the number of rooms in a property shall be calculated by presuming that single rooms without kitchens are one room units, studios are two room units, one bedroom units without a separate dining room are three room units, and so on. Each parking space and garage space in the building which is included in a tenant's rental or for which a user fee is charged shall be counted as one room. Areas used for commercial purposes but for which no user fee is charged to the tenants, including but not limited to management offices and retail space, shall be included in the room count in a manner that most reasonably takes into account the size of the space and its utility usage.

(vi) To get the monthly utility passthrough for a unit, add the number of rooms in the unit to the number of rooms for parking and/or garage spaces included in the tenant's rental or for which a user fee is paid by the tenant, and multiply that total number of rooms by the monthly utility increase per room.

(i) Each utility passthrough shall apply only for the twelve-month period after
it is imposed.

(j) Nothing in this section or in these Rules and Regulations shall be interpreted as requiring any landlord to pass through any utility increase or to increase any tenant's rent.

(k) The amount of rent due from the tenant for any utility passthrough shall

1 be due on the same date as a rent payment normally would be due.

2 (l) A utility passthrough may be imposed only at the time of an annual rent
3 increase. However, no amount passed through to the tenant as a utility increase shall
4 be included in the tenant's base rent for purposes of calculation of the amount of rent
5 increases allowable under the Ordinance and these Rules and Regulations.

6 (m) The provisions of this Section shall be deemed a part of every rental
7 agreement or lease, written or oral, for the possession of a rental unit subject to the
8 Ordinance unless the landlord and the tenant agree that the landlord will not pass
9 through any utility increases, in which case such agreement will be binding on the
10 landlord and on any successor owner of the property.

11 (n) Where a utility increase has been lawfully passed through to the tenant, a
12 change in the ownership of the property in which the tenant's unit is located will not
13 affect the tenant's liability to pay the amount passed through.

14
15
16 *—Amend Section 10.12 by adding the following language to the beginning of Section 10.12:*

17 **Section 10.12 Documentation of Gas and Electrical Increases**

18 The following provisions shall apply to utility passthroughs where the notice of
19 rent increase for the utility passthrough was served prior to [the effective date of
20 Section 6.16]:

21 (a) A tenant may petition for an arbitration hearing if the landlord has failed
22 to provide the tenant with a clear explanation of the charges for gas and electricity on
23 which an increase is being based.

24 (b) The landlord shall have the burden of proving the calculations upon which
25 this increase is based.

26 (c) A petition based on this section shall be accompanied by the notice of
27

1 increase.

2
3 – Add the following new Section 10.13:

4 **Section 10.13 Improper Utility Passthrough**

5 The following provisions shall apply to utility passthroughs where the notice of
6 rent increase for the utility passthrough was served on or after [the effective date of
7 Section 6.16]:

8 (a) A tenant may petition for an arbitration hearing if the landlord has
9 increased the tenant's rent based on an increase in utility costs, but (1) has failed to
10 file a petition for approval of the utility passthrough pursuant to Section 6.16 of these
11 Rules, or (2) has failed to discontinue the utility passthrough after twelve months.

12 (b) The landlord shall have the burden of proving that the utility passthrough
13 has been approved and/or imposed in accordance with Section 6.16 of these Rules.

14 (c) A petition based on this section shall be accompanied by the notice of
15 increase.

1 PROPOSED AMENDMENTS TO THE RENT BOARD RULES AND REGULATIONS
2 REGARDING UTILITY PASSTHROUGHS

3 -VERSION 2 (with indexing) -

4 [additions in underline; deletions in strikethrough]

5
6 - Amend Section 1.19 to reference new Section 6.16 as well as Section 4.11. Also amend the
7 reference to Ordinance Section 37.2(o) to reflect the correct section of 37.2(q).

8 **Section 1.19 Tenant's Utilities**

9 For the purpose of Ordinance Section 37.2~~(e)~~ (q) and Sections 4.11 and 6.16
10 of these Rules, "Tenant's Utilities" means charges for natural gas or electricity provided
11 by Pacific Gas and Electric Company directly to the unit occupied by the tenant or to
12 the building in which the unit is located and benefiting the tenant, whether paid by the
13 tenant alone, by the landlord alone, or part by the tenant and part by the landlord.
14

15
16 - Amend Section 4.11 by adding the following language to the beginning of Section 4.11:

17 **Section 4.11 Computation of Passthrough of Gas and Electricity**

18 The following provisions shall apply to utility passthroughs where the notice of
19 rent increase for the utility passthrough was served prior to [the effective date of
20 Section 6.16], except that with respect to utility passthroughs that are in effect on
21 [the effective date of Section 6.16], such a utility passthrough shall be discontinued
22 twelve months after it was imposed or by [60 days after the effective date of Section
23 6.16], whichever is later.

24 {NOTE: Text of Section 4.11 to remain the same}

1 – Add the following new Section 6.16:

2 **Section 6.16 Utility Passthrough**

3 The following provisions shall apply to utility passthroughs where the notice of
4 rent increase for the utility passthrough was served on or after [the effective date of
5 Section 6.16]:

6 (a) Where a landlord pays for gas, electricity and/or steam provided directly
7 to the unit occupied by the tenant and/or to the common areas of the property in
8 which the unit is located, and seeks to recover the increase in the cost of these utilities
9 from the tenant, the landlord must file a petition for approval of the utility passthrough
10 on a form prescribed by the Board. The petition shall specify the units on the property
11 that are subject to the petition. The petition will be decided without a hearing unless
12 the Administrative Law Judge determines that a hearing is required.

13 (b) For all tenancies existing on December 31, 2003, the “base year” for
14 purposes of this section shall be calendar year 2002, except that where there is a
15 utility passthrough in effect for the tenancy on [the effective date of this amendment]
16 and the base year for that passthrough was properly determined pursuant to Section
17 4.11 of these Rules, the landlord may continue to use that tenant’s same base year for
18 future utility passthrough calculations. For all new tenancies commencing after
19 December 31, 2003, the “base year” shall be the calendar year immediately preceding
20 the inception of the tenancy. However, a landlord may petition the Board for approval
21 of an alternate base year if the landlord became an owner of record after December
22 31, 2002 and can demonstrate a good faith, but unsuccessful, effort to obtain the
23 base year utility costs specified in this subsection. An alternate base year that creates
24 exaggerated results will not be approved unless the proposed alternate base year
25 coincides with the landlord’s first full calendar year of ownership. Different tenants in
26 the same property may have different base years depending on when they moved into

1 the property and whether the Rent Board has approved an alternate base year. The
2 base year will remain the same for all future utility passthrough calculations for any
3 tenant.

4 (c) For purposes of this section, the "comparison year" in all cases shall be
5 the calendar year immediately preceding the filing of the landlord's petition for
6 approval of the utility passthrough.

7 (d) The landlord must file a petition before giving legal notice of a rent
8 increase for a utility passthrough. The petition must be filed no more than twelve
9 months after the "comparison year" listed in the petition. The notice shall be in
10 conformance with the requirements set forth in Section 4.10 above and shall further
11 include the dollar amount requested for the utility passthrough. This passthrough shall
12 be inoperative unless and until the petition is approved by the Administrative Law
13 Judge. Any amounts approved by the Administrative Law Judge shall relate back to the
14 effective date of the legal notice, if given. A landlord may choose instead not to serve
15 legal notice of a proposed utility passthrough until after the decision of the
16 Administrative Law Judge is rendered. In any event, no rent increase approved by the
17 Administrative Law for a utility passthrough shall become effective until the tenant's
18 anniversary date.

19 (e) No landlord may pass through any increase in the cost of utilities to a
20 tenant until the tenant has occupied one or more units in the subject property for one
21 continuous year.

22 (f) Where the utility bills include the cost of gas and/or electricity for laundry
23 facilities and the landlord charges a user fee for the laundry facilities, the landlord may
24 not pass through any increase in the building's cost of utilities unless the landlord
25 complies with one of the following:

26 (i) where the laundry facilities are separately metered in both the base
27

1 year and comparison year, the landlord shall not include the utility costs for the
2 laundry facilities in the utility passthrough calculation; or

3 (ii) where the laundry facilities are not separately metered in both the
4 base year and the comparison year and there is a third party vendor that
5 collects the user fees from the laundry facilities, the landlord shall deducts the
6 net income actually received by the landlord from the third party vendor from
7 the total utility costs for the building; or

8 (iii) where the laundry facilities are not separately metered in both the
9 base year and the comparison year and there is not a third party vendor that
10 collects the user fees from the laundry facilities, the landlord shall deduct 50%
11 of the user fees actually collected by the landlord from the total utility costs for
12 the building.

13 (g) Where the utility bills include the cost of gas and/or electricity for laundry
14 facilities and the laundry facilities are not available to or operated for the benefit of the
15 tenant, and the laundry facilities are not separately metered in both the base year and
16 comparison year, the landlord may not pass through to that tenant any increase in the
17 building's cost of utilities.

18 (h) The landlord shall calculate the amount of the utility passthrough as
19 follows:

20 (i) Compile the utility bills for the "base year" and the "comparison
21 year" as defined in subsections (b) and (c) above.

22 (ii) Calculate the total utility cost for the comparison year and the
23 total utility cost for the base year. The utility passthrough shall be based on
24 actual costs incurred by the landlord during the relevant calendar years,
25 regardless of when the utility bill was received or paid.

26 (iii) Adjust the base year utility cost to reflect a constant dollar value
27

1 with the comparison year by using the following methodology:

2 (A) Find the "annual" Consumer Price Index (CPI) figure for the
3 San Francisco-Oakland-San Jose, CA area published by the U.S. Department
4 of Labor, Bureau of Labor Statistics, for both the base year and the
5 comparison year. The annual CPI figures beginning with 2002 are available
6 from the Rent Board.

7 (B) Subtract the base year CPI from the comparison year CPI to
8 get the difference in the CPI.

9 (C) Divide the difference in the CPI by the base year CPI to get
10 the percent increase in the CPI.

11 (D) Multiply the percent increase in the CPI by the base year
12 utility cost and add the result to the base year utility cost to get the
13 adjusted base year utility cost.

14 (iv) Subtract the adjusted base year utility cost from the comparison
15 year utility cost to get the adjusted utility cost increase. If there is no increase or
16 if there has been a decrease, no passthrough is allowed.

17 (v) Divide the resulting figure, if greater than zero, by twelve (12) to
18 determine the average monthly utility increase for the entire property.

19 (vi) Divide the average monthly utility increase by the number of rooms
20 in the property to get the amount of the utility passthrough that may be imposed
21 for each room. For purposes of this section, the number of rooms in a property
22 shall be calculated by presuming that single rooms without kitchens are one room
23 units, studios are two room units, one bedroom units without a separate dining
24 room are three room units, and so on. Each parking space and garage space in the
25 building which is included in a tenant's rental or for which a user fee is charged
26 shall be counted as one room. Areas used for commercial purposes but for which
27

1 no user fee is charged to the tenants, including but not limited to management
2 offices and retail space, shall be included in the room count in a manner that most
3 reasonably takes into account the size of the space and its utility usage.

4 (vii) To get the monthly utility passthrough for a unit, add the number of
5 rooms in the unit to the number of rooms for parking and/or garage spaces
6 included in the tenant's rental or for which a user fee is paid by the tenant, and
7 multiply that total number of rooms by the monthly utility increase per room.

8 (i) Each utility passthrough shall apply only for the twelve-month period after
9 it is imposed.

10 (j) Nothing in this section or in these Rules and Regulations shall be
11 interpreted as requiring any landlord to pass through any utility increase or to increase
12 any tenant's rent.

13 (k) The amount of rent due from the tenant for any utility passthrough shall
14 be due on the same date as a rent payment normally would be due.

15 (l) A utility passthrough may be imposed only at the time of an annual rent
16 increase. However, no amount passed through to the tenant as a utility increase shall
17 be included in the tenant's base rent for purposes of calculation of the amount of rent
18 increases allowable under the Ordinance and these Rules and Regulations.

19 (m) The provisions of this Section shall be deemed a part of every rental
20 agreement or lease, written or oral, for the possession of a rental unit subject to the
21 Ordinance unless the landlord and the tenant agree that the landlord will not pass
22 through any utility increases, in which case such agreement will be binding on the
23 landlord and on any successor owner of the property.

24 (n) Where a utility increase has been lawfully passed through to the tenant, a
25 change in the ownership of the property in which the tenant's unit is located will not
26 affect the tenant's liability to pay the amount passed through.

1 –Amend Section 10.12 by adding the following language to the beginning of Section 10.12:

2 **Section 10.12 Documentation of Gas and Electrical Increases**

3 The following provisions shall apply to utility passthroughs where the notice of
4 rent increase for the utility passthrough was served prior to [the effective date of
5 Section 6.16]:

6 (a) A tenant may petition for an arbitration hearing if the landlord has failed
7 to provide the tenant with a clear explanation of the charges for gas and electricity on
8 which an increase is being based.

9 (b) The landlord shall have the burden of proving the calculations upon which
10 this increase is based.

11 (c) A petition based on this section shall be accompanied by the notice of
12 increase.

13
14 – Add the following new Section 10.13:

15 **Section 10.13 Improper Utility Passthrough**

16 The following provisions shall apply to utility passthroughs where the notice of
17 rent increase for the utility passthrough was served on or after [the effective date of
18 Section 6.16]:

19 (a) A tenant may petition for an arbitration hearing if the landlord has
20 increased the tenant's rent based on an increase in utility costs, but (1) has failed to
21 file a petition for approval of the utility passthrough pursuant to Section 6.16 of these
22 Rules, or (2) has failed to discontinue the utility passthrough after twelve months.

23 (b) The landlord shall have the burden of proving that the utility passthrough
24 has been approved and/or imposed in accordance with Section 6.16 of these Rules.

25 (c) A petition based on this section shall be accompanied by the notice of
26 increase.



SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, April 20, 2004 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

GAVIN NEWSOM
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

I. Call to Order

LARRY BEACH BECKER
DAVID GRUBER
DEBORAH HENDERSON
ANTHONY JUSTMAN
MERRIE T. LIGHTNER
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

President Wasserman called the meeting to order at 6:10 p.m. At that time, she welcomed new Landlord Alternate Commissioner Jim Hurley. She also thanked ex-Landlord Commissioner Merrie Lightner for her many years of dedicated service to the Board.

II. Roll Call

Commissioners Present: Becker; Gruber; Henderson; Hurley; Marshall;
Mosbrucker; Mosser; Wasserman.
Staff Present: Gartzman; Wolf.

Commissioner Murphy appeared on the record at 6:24 p.m. and
Commissioner Justman arrived at the meeting at 6:26 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of March 23, 2004.
(Gruber/Becker: 5-0)

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APR 30 2004

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IV. Remarks from the Public

A. Robert Pender, Vice-President of the Parkmerced Residents' Organization (PRO), told the Board that PRO celebrated its 30th birthday on March 4th. Mr. Pender invited the Commissioners and staff to his 80th birthday party. Mr. Pender stated his support for indexing, but only of PG&E passthroughs.

V. Consideration of Appeals

A. 383a Elsie St.

AT040023

The landlord's petition for certification of the cost of a new roof to 2 of 3 units was granted. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the
tenant's claim of financial hardship. (Becker/Marshall: 5-0)

B. 1096 Pine St. #303

AT040029

The tenant's hardship appeal of a decision certifying a capital improvement passthrough in the amount of \$48.64 was accepted and remanded for hearing. The



Administrative Law Judge found that, although the tenant demonstrated that paying the proposed passthrough constituted a financial hardship, the tenant lives alone in a two-bedroom unit and could alleviate the hardship by getting a roommate. Therefore, his appeal was denied, although the tenant was granted a nine-month deferral of the passthrough in order to obtain a roommate. On further appeal, the tenant argues that: the decision is prejudicial against long-term tenants who live where they do not because of the number of rooms, but because of the amount of rent; the decision fails to take the amount of living space into account; and it is unreasonable to expect an elderly individual to obtain a roommate.

MSC: To accept the appeal and remand the case to the Administrative Law Judge for a hearing to determine whether, under these facts and these circumstances, it is appropriate to require the tenant to obtain a roommate in order to qualify for a hardship deferral of the passthrough. (Marshall/Becker: 3-2; Gruber, Murphy dissenting)

C. 354 San Carlos St.

AT040024

The tenant's petition alleging decreased housing services was denied. On appeal, the tenant maintains that: statements provided by the landlord and her witnesses at the hearing were false; the prior landlord and one of the landlord's witnesses never lived in the subject unit; the tenant always had use of the kitchen facilities; there are unsafe conditions in the unit; testimony of the landlord's witness was incorrectly translated at the hearing; and the landlord is harassing the tenant.

MSC: To deny the appeal. (Gruber/Murphy: 5-0)

D. 3042 Sacramento #4

AL040028

The tenant's petition alleging an initial base rent in excess of the amount the Master Tenants were paying the landlord was granted, and the Master Tenants were found liable to the subtenant in the amount of \$2,118.18. On appeal, the Master Tenants claim that: the subtenant moved in with an agreement to reside in the unit for only one month; the subtenant agreed to pay more than her proportional share of the rent when she moved in; the subtenant's boyfriend moved in to the unit without an agreement; the subtenant stopped paying rent prior to moving out of the unit; and the Master Tenants have been providing a comfortable living environment for shared living for eighteen years.

MSC: To deny the appeal. (Gruber/Murphy: 5-0)

E. 1550 Bay St. #A206

AL040030

The tenant's petition alleging decreased housing services was granted and the landlord was found liable to the tenant in the amount of \$2,250.00 due to the removal of a sauna, steam room and showers and off-street parking spaces. On appeal, the landlord asserts that: the tenant has no standing to pursue the petition since he had moved out of the unit by the time he filed the petition; the decision violates the California Constitution in that it exercises judicial powers which are reserved for the courts; the decision is not reasonably necessary to effectuate the regulatory purpose of the Ordinance, which is to safeguard tenants from excessive rent increases; the amount of rent collected by the landlord at the time the tenant lived in the unit was lawful and cannot now be made unlawful; the amount of the rent reductions is excessive and not supported by the evidence; since the tenant waited

so long to file his claim, the loss of services could not have been substantial; the loss of short-term parking spaces does not constitute a reduction in services; and the one year limit on the rent reduction should apply and run from the date that the tenant complained of the loss of the service.

MSC: To recuse Commissioner Murphy from consideration of this appeal. (Murphy/Justman: 5-0)

MSC: To deny the appeal except to remand the case to the Administrative Law Judge on the record for necessary Technical Corrections. (Becker/Marshall: 3-2; Gruber, Hurley dissenting)

F. 289 Connecticut

AL040020
(cont. from 3/23/04)

The landlord's petition for a rent increase based on increased operating expenses was denied because the Administrative Law Judge found that the increase was based only on repairs that were extraordinary, rather than routine, which created exaggerated results. On appeal, the landlord argues that: the calculation periods were not selected to create exaggerated results; the repairs were routine, and not extraordinary; and the burden of proof was met with regard to electrical repair work performed in December, 2002.

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the record to vacate the decision and find no exaggerated results; however, the plants do not constitute a repair and those costs shall be disallowed. (Gruber/Justman: 5-0)

VI. Public Hearing

Proposed Amendments to Rules and Regulations Section 4.11 Regarding PG&E Passthroughs

At the request of Supervisor Peskin, and subsequent to a Public Hearing before the Land Use Committee, Senior Administrative Law Judge Sandy Gartzman brought several issues pertaining to utility passthroughs to the Board's attention at their meeting on January 6, 2004. At the Board's request, Ms. Gartzman and Senior Administrative Law Judge Tim Lee drafted proposed regulations with explanatory memoranda to address the issues raised, which were amended pursuant to discussion at meetings on January 20th, February 3rd, February 17th, and March 9th. At their meeting on March 23rd, the Commissioners voted to put the proposed regulations out for Public Hearing; two versions were put out, one with indexing for inflation, and one without.

The Public Hearing convened at 7:05 p.m. and concluded at 7:30 p.m. Nine individuals testified as follows below:

1. Clay Tominaga, representing the landlords at the Golden Gateway complex, said that utility costs were not an issue until the energy crisis. While night utilities costs now get billed at a lower rate, they didn't have time-of-use meters in 1980. Mr. Tominaga feels that different ways of reading a meter disfavor indexing. He also believes that there are "unanswered questions" in the new draft. There could be a problem with the length of time it takes to receive a decision from the Rent Board, while

PG&E passthroughs need to be done on a calendar year basis. Mr. Tominaga also feels that "everyone should share in PG&E's bankruptcy costs."

2. Robert Pender of PRO introduced Laura Traveler and Carolyn Cahn, past and present Presidents of PRO. He told the Board that Parkmerced makes a "zillion" mistakes in calculating PG&E passthroughs, and that a petition should be required. Mr. Pender supports indexing the passthroughs, since it is unfair to compare 1980 to 2004 dollars.
3. Beatrice Wahlbeck has been a tenant in her unit since 1978 – there was no laundry room in the building at that time. Ms. Wahlbeck provided a spread sheet with calculations to show the effect of the landlord having added two sets of laundry room appliances. Ms. Wahlbeck questions the fairness of deducting laundry room income when the passthrough might not have been justified to begin with. Ms. Wahlbeck has never used the laundry facility in her building. She believes that the proposed amendments should address all possible situations.
4. Carolyn Cahn, President of PRO, told the Board that every passthrough imposed by Parkmerced that has been challenged by a tenant has been found to be incorrectly calculated. However, each tenant must file their own petition to challenge a passthrough, and many tenants at Parkmerced are elderly and afraid. Ms. Cahn believes that the regulations should provide that an erroneous passthrough must be corrected for all tenants and that there should be some form of punishment for owners who "put in false numbers." Ms. Cahn pointed out that there are problems with mixed use, commercial and residential, properties.
5. Brook Turner submitted a letter from Michelle Horneff, President of the Professional Property Management Association, and spoke on behalf of the Coalition for Better Housing. Mr. Turner said that his association agrees with the requirement that landlords file petitions for PG&E passthroughs, as it will make the process "proper and fair." He said, however, that indexing isn't fair, as these passthroughs "don't put money in landlord's pockets as the landlord is just a collection agency for PG&E."
6. Laura Traveler, ex-President of PRO, said that different passthrough amounts are being collected, even on the same block. She said that the Board "has to have indexing"; that there are many different corporate entities at Parkmerced; and, since the person who does the calculations is out-of-state, there has to be an "overseer."
7. Lisa Shannon of Parkmerced said that the petition process will be "cumbersome," but that the requirement makes "quality control sense." Ms. Shannon spoke against indexing, which she said would reduce a \$14.41 passthrough to \$4.78. This means that landlords would have to shoulder most of the burden of utility costs, over which they have no control. Ms. Shannon believes the passthrough provisions make sense the way they are, and that the Board should "keep it simple."
8. Mitchell Omerberg of the Affordable Housing Alliance applauded the petition process. He said that there is still a problem with the calculation since the base year can be so long ago. This means you are picking up the

increase in PG&E costs, but also the decline in the value of the dollar. Mr. Omerberg said that "you don't need indexing if there isn't such a big gap in time."

9. David Pilpel of the Sunshine Task Force said that a "reasonable" staff report would provide historical explanation, and that some examples should be provided. Mr. Pilpel suggested that the Board pull back the regulations and re-draft, along with providing a better explanation.

This issue was put over for continued discussion among the landlord and tenant communities, and will be calendared for the meeting on May 4th.

VII. Communications

In addition to correspondence concerning cases on the calendar and the proposed amendments to Rules Section 4.11, the Commissioners received the following communications:

- A. New Rent Board Staff and Commissioner rosters.
- B. The office workload statistics for the month of February, 2004.
- C. A Memorandum from Deputy City Attorney Andrew Schwartz regarding the enforcement of Proposition G.
- D. The Annual Report on Eviction Notices to the Board of Supervisors.
- E. Vacation, Leave or Business Travel forms.
- F. The "Good Government Legal Guide, an Overview of the Laws Governing the Conduct of Public Officials", prepared by the Office of the City Attorney.
- G. A Pending Litigation Status Report prepared by Senior Administrative Law Judge Tim Lee.

VIII. Director's Report

Acting Executive Director Wolf informed the Board that legislation sponsored by Supervisor Peskin setting a new index for establishing the rate for interest on security deposits was passed by the Land Use Committee on April 19th. The new rate will be 1.2%, the same as last year's rate, and will be retroactive to March 1st.

IX. Old Business

Applicability of Cwyner Decision

The Board briefly discussed a Memorandum prepared by Deputy City Attorney Andrew Schwartz in response to a request from Commissioner Murphy regarding the applicability of the Cwyner decision to the enforcement of Proposition G. Mr. Schwartz advised the Board that the provisions of Proposition G continue to apply to any landowner who is not an individually named petitioner in the Cwyner case.

IV. Remarks from the Public (cont.)

B. David Pilpel of the Sunshine Ordinance Task Force said that he was "lost" in the discussion of proposed amendments to Rules and Regulations Section 4.11, and said that the Board should "be more specific or you lose your public." Mr. Pilpel offered some constructive suggestions regarding possible changes to the Minutes and Agenda, especially the "Accessible Meeting Policy."

X. New Business

Acting Executive Director Wolf brought to the Board's attention the language of Section 11.23 of the Rules and Regulations, which states: "If the Administrative Law Judge determines that a party cannot afford the services of an interpreter, the Board shall assist in obtaining an interpreter or attorney at no cost to the party." The Parkmerced Residents' Organization (PRO) has made a request for legal assistance pursuant to this Section. This issue shall be calendared for discussion at the next meeting. Commissioner Murphy inquired regarding the accuracy of statistics cited in a flyer for the "Tenant Congress" on April 24th.

XI. Calendar Items

April 1 27, 2004 - NO MEETING

May 4, 2004

4 appeal considerations

Old Business: Rules and Regulations Section 4.11

New Business:

A. Rules and Regulations Section 11.23

B. Fee Legislation

XII. Adjournment

President Wasserman adjourned the meeting at 8:30 p.m.



**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM
MAYOR

JOSEPH GRUBB
EXECUTIVE DIRECTOR

SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

Tuesday, 6:00 p.m.,
May 4, 2004
25 Van Ness Avenue, #70, Lower Level

DOCUMENTS DEPT.

AGENDA

APR 30 2004

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PUBLIC LIBRARY

LARRY BEACH BECKER I.
DAVID GRUBER
DEBORAH HENDERSON II.
ANTHONY JUSTMAN
MERRIE T. LIGHTNER III.
CATHY MOSBRUCKER
NEVEO MOSSER IV.
BARTHOLOMEW MURPHY

Call to Order
Roll Call
Approval of the Minutes
Remarks from the Public

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 540 Jones #701 AT040031

The tenant appeals the decision denying claims of decreased housing services.

B. 2033 Turk St. AL040032

The landlords appeal the remand decision granting rent reductions due to recurring leaks in the unit.

C. 3647-3651 - 19th St. AL040033

The landlords appeal the decision granting a claim of decreased housing services due to the landlords' failure to consent to a replacement roommate.

D. 835 Cole St., Apt. #1 AL040035

The landlord appeals the decision granting rent reductions due to recurring leaks in the unit.

VI. Communications

VII. Director's Report

VIII. Old Business

Proposed Amendments to Rules and Regulations Section 4.11
Regarding PG&E Passthroughs



IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

IX. New Business

A. Rules and Regulation Section 11.23 Regarding Provision of Attorneys and Interpreters

B. Rent Board Fee Legislation

X. Calendar Items

XI. Adjournment

ACCESSIBLE MEETING POLICY

American sign language interpreters will be available upon request. Please contact the Rent Board at 252-4648 at least 72 hours prior to the meeting. Late requests will be honored if possible. Translation services, sound enhancement or alternative formats are available if requested at least 72 hours prior to the meeting. Call 252-4641 to place your specific request.

會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4641。

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City and County of San Francisco



SHARON K. WASSERMAN
PRESIDENT

POULY MARSHALL
VICE PRESIDENT

LARRY BEACH BECKER
DAVID GRUBER
DEBORAH HENDERSON
JIM HURLEY
ANTHONY J. SIMAN
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

Residential Rent Stabilization
and Arbitration Board

GAVIN NEWSOM
MAYOR

DELENE WOLF
ACTING EXECUTIVE DIRECTOR

≡ NOTICE THAT THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,

SCHEDULED FOR TUESDAY, MAY 4,
2004, HAS BEEN CANCELLED
≡

THE NEXT REGULAR MEETING WILL BE HELD ON
TUESDAY, MAY 18, 2004

DOCUMENTS DEPT.

MAY - 4 2004

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NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,

GAVIN NEWSOM
MAYOR

DELENE WOLF
ACTING EXECUTIVE DIRECTOR

SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

Tuesday, 6:00 p.m.,
May 18, 2004
25 Van Ness Avenue, #70, Lower Level

AGENDA

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MAY 14 2004

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- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- V. Consideration of Appeals

A. 345 Jones St. (8 units) AT040039-46

The tenants in eight units appeal the decision certifying capital improvement costs on the grounds of financial hardship.

B. 2 Casa Way #205 AT040038

The tenants appeal the decision determining that they are not "Tenants in Occupancy" pursuant to Rules Section 1.21.

C. 690 Shotwell AT040047

The tenant appeals the decision granting a claim of decreased housing services, alleging that certain factual findings are in error.

D. 2033 Turk St. AL040032
(rescheduled from 5/4/04)

The landlords appeal the remand decision granting rent reductions due to recurring leaks in the unit.

E. 3647-3651 - 19th St. AL040033
(rescheduled from 5/4/04)

The landlords appeal the decision granting a claim of decreased housing services due to the landlords' failure to consent to a replacement roommate.



F. 835 Cole St., Apt. #1

AL040035
(rescheduled from 5/4/04)

The landlord appeals the decision granting rent reductions due to recurring leaks in the unit.

VI. Communications

VII. Director's Report

VIII. Old Business

Proposed Amendments to Rules and Regulations Section 4.11
Regarding PG&E Passthroughs

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

IX. New Business

Rules and Regulations Section 11.23 Regarding Provision of Attorneys
and Interpreters

X. Calendar Items

XI. Adjournment

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**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM
MAYOR

DELENE WOLF

ACTING EXECUTIVE DIRECTOR

SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

Tuesday, May 18, 2004 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

DOCUMENTS DEPT.

I. Call to Order

MAY 27 2004

LARRY BEACH BECKER
DAVID GRUBER
DEBORAH HENDERSON
JIM HURLEY
ANTHONY JUSTMAN
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

President Wasserman called the meeting to order at 6:06 p.m.

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II. Roll Call

Commissioners Present: Becker; Gruber; Henderson; Hurley; Marshall;
Mosbrucker; Wasserman.
Commissioners not Present: Mosser.
Staff Present: Wolf.

Commissioner Justman appeared on the record at 6:09 p.m.; Commissioner
Murphy arrived at the meeting at 6:35 p.m. Commissioner Becker went off the
record at 7:30 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of April 20, 2004.
(Hurley/Becker: 5-0)

IV. Remarks from the Public

A. Tenant Jeremias Zabala of 345 Jones #203 appeared on behalf of the
tenant appellants at the building, and was accompanied by his representative, Luis
Berahona. Mr. Zabala spoke with the assistance of a Tagalog interpreter. He
informed the Board that, if the tenants' hardship appeals were not granted, several
members of the tight-knit tenant community in the building would have to move. Mr.
Zabala also alleged that the capital improvements were really only minor repairs and
complained of the conditions in the building. He feels it is unfair for the tenants to
have to pay, since they are only receiving S.S.I.

B. Tenant Ernestine Weiss spoke on behalf of the tenants at the Golden
Gateway complex. Ms. Weiss said that Rules Section 4.11 constitutes "gross
fraud" because the landlord gets a rent increase each year, which includes PG&E.
Ms. Weiss told the Commissioners that this hits the elderly the worst, and that they
should "forget indexing and remove it altogether."

C. Robert Pender, Vice-President of the Parkmerced Residents' Organization
(PRO), said that the annual rent increase originally included PG&E. Mr. Pender told
the Board that the management at Parkmerced is "all over the map" with PG&E
passthroughs, and encouraged the Board to "end the passthrough and end the
confusion."

V. Consideration of Appeals

A. 345 Jones St. (8 units)

AT040039-46

The landlords' petition for certification of capital improvement costs to 25 of 30 units was granted. The tenants in eight units appeal the decision on the grounds of financial hardship. All of the appeals were filed ten months late because the tenants are not native English speakers, many of them are elderly, and they did not realize that they had the right to appeal.

MSC: To find good cause for the late filing of the appeals.
(Becker/Marshall: 5-0)

MSC: To accept the appeal of the tenant in unit A-100 and remand the case for a hearing on the tenant's claim of financial hardship.
(Becker/Marshall: 3-2; Gruber, Hurley dissenting)

MSF: To deny the appeal of the tenant in unit #103. (Gruber/Hurley: 2-3; Justman, Marshall, Becker dissenting)

MSC: To accept the appeal of the tenant in unit #103 and remand the case for a hearing on the tenant's claim of financial hardship.
(Marshall/Becker: 3-2; Gruber, Hurley dissenting)

MSC: To accept the appeal of the tenants in unit #200 and remand the case for a hearing on the tenants' claim of financial hardship.
(Becker/Gruber: 5-0)

MSC: To accept the appeal of the tenants in unit #203 and remand the case for a hearing on the tenants' claim of financial hardship.
(Gruber/Becker: 5-0)

MSC: To accept the appeal of the tenants in unit #205 and remand the case for a hearing on the tenants' claim of financial hardship.
(Gruber/Becker: 5-0)

MSC: To accept the appeal of the tenants in unit #405 and remand the case for a hearing on the tenants' claim of financial hardship.
(Marshall/Becker: 3-2; Gruber, Hurley dissenting)

MSC: To accept the appeal of the tenants in unit #501 and remand the case for a hearing on the tenants' claim of financial hardship.
(Becker/Marshall: 3-2; Gruber, Hurley dissenting)

MSC: To accept the appeal of the tenants in unit #505 and remand the case for a hearing on the tenants' claim of financial hardship.
(Marshall/Becker: 3-2; Gruber, Hurley dissenting)

B. 2 Casa Way #205

AT040038

The landlord's petition for a determination under Rules Section 1.21 was granted and the Administrative Law Judge found that no "tenants in occupancy" resided at the subject premises at the time the petition was filed. On appeal, the tenants claim that: many of the indicia of residency are present at the subject unit; the San Francisco

Unified School District accepted the subject unit as the tenants' principal place of residence for the purpose of enrolling their children in public school; the premises have not been sublet; the tenants meet the definition of "tenant" in the Ordinance and continue to use and occupy the premises; and the Ordinance does not require that a unit be a tenant's principal place of residence in order for rent increase limitations to apply.

MSC: To recuse Commissioner Wasserman from consideration of this appeal. (Marshall/Justman: 5-0)

MSC: To deny the appeal. (Gruber/Murphy: 3-2; Becker, Marshall dissenting)

C. 690 Shotwell

AT040047

The tenant's petition alleging decreased housing services due to the removal of a toilet was granted and the landlord was found liable to the tenant in the amount of \$521.48. On appeal, the tenant does not challenge the result of the Decision but, rather, alleges that certain factual findings are in error.

MSC: To deny the appeal except to remand the case to the Administrative Law Judge for a Technical Correction as to the amount of the rent reduction granted.
(Becker/Marshall: 5-0)

D. 2033 Turk

AL040032
(rescheduled from 5/4/04)

The tenant's petition alleging decreased housing services due to a recurrent ceiling leak and water damages was granted, and the landlords were found liable to the tenant in the amount of \$540.00. The landlords' appeal was accepted and the case was remanded to re-open the record on the past and present status of the leaks. In the Decision on Remand, the Administrative Law Judge finds the landlords liable in the amount of \$780.00 due to the continuing leaks. On appeal, the landlords maintain that: the Administrative Law Judge is biased in favor of the tenant; the problem was not substantial, since the tenant failed to complain for a two-year period; a DBI inspector failed to find evidence of water intrusion; there is an arithmetic error in the calculation of the rent refund; and there is no current evidence of an active leak.

MSC: To deny the appeal except to remand the case to the Administrative Law Judge for a Technical Correction to the Decision to adjust the amount of the rent overpayments.
(Becker/Marshall: 5-0)

E. 3647-3651 – 19th St.

AL040033
(rescheduled from 5/4/04)

The tenant's petition alleging that the landlords' failure to consent to a replacement roommate constituted a substantial decrease in housing services was granted, and the landlords were found liable to the tenant in the amount of \$679.31. The landlords had failed to give their consent to the tenant's proposed roommate because she had previously lived in another unit in the building, and the landlords alleged that she had left this unit in poor condition. On appeal, the landlords claim that: their rejection

of the proposed roommate was reasonable; there was damage to the flat for which no deductions to the security deposit were taken; and the tenant failed to provide the landlords with any additional information regarding the proposed subtenant when given the opportunity.

MSC: To deny the appeal. (Becker/Marshall: 5-0)

F. 835 Cole St., Apt. #1

AL040035

(rescheduled from 5/4/04)

The tenant's petition alleging decreased housing services due to leaks in the bedroom and bathroom was granted and the landlord was found liable to the tenant in the amount of \$7,187.50. On appeal, the landlord claims that the amount of the rent reductions are excessive considering his many attempts to remedy the problems; and that at the time of the hearing, he did not have the evidence to prove that the complaint has been abated.

MSC: To deny the appeal. (Becker/Marshall: 5-0)

VI. Communications

The Commissioners received the following communications:

A. A letter from landlord Bill Quan regarding the proposed amendments to Rules and Regulations Section 4.11.

B. The corrected office workload statistics for the month of March, 2004.

C. An updated list of amendments to the Rent Ordinance.

VII. Director's Report

Acting Executive Director Wolf informed the Board that interviews have commenced for the hiring of a new Executive Director. She also told them that the Mayor's Office will be sponsoring legislation authorizing the rental unit fee and that, in the legislation, the percentage of the fee borne by tenants and landlords will remain the same as it was this year. Ms. Wolf reminded the Commissioners to submit their Form 730 Statement of Economic Interest forms.

VIII. Old Business

Proposed Amendments to Rules and Regulations Section 4.11 Regarding PG&E Passthroughs

On April 20, 2004, the Board held a Public Hearing on two versions of proposed amendments to Rules Section 4.11, one with indexing for inflation and one without. The Commissioners continued their discussion on the merits of indexing at this evening's meeting. Commissioner Murphy said that the Coalition for Better Housing was prepared to pay Professor Davidoff from the Fisher School at the Haas School of Business to prepare an analysis. Commissioner Marshall responded that the decision was one of policy, rather than economics. Commissioner Marshall reiterated her opinion that the purpose of the PG&E passthrough is to recover extraordinary costs, and not inflationary increases accounted for by the annual increase. Commissioner Murphy questioned whether

landlords who have long-standing correctly calculated PG&E passthroughs have a vested right in retaining their base years without the reduction in the amount of the passthroughs that indexing would cause. Commissioner Marshall said that she was prepared to compromise and only index every five years; Commissioner Murphy said that he could accept indexing on a going-forward basis only. Since the Landlord and Tenant Commissioners failed to come to agreement, Neutral Commissioners Justman and Wasserman conferred and offered the following proposal: for tenants who never had a utility passthrough or who had a passthrough in effect on 12/31/03 but there are not records to prove costs in the base year, the base year shall be 2002 but after five years the base year shall be moved up five years; and for continuing passthroughs where a base year prior to 2002 can be proved, there will be no indexing for years prior to 2002, but every year thereafter shall be indexed by the CPI. President Wasserman asked that staff draft this proposal, which will be discussed at the next Board meeting and put out for Public Hearing some time thereafter. President Wasserman also pointed out that the draft amended regulations eliminate many of the abuses that the Board, at the bequest of Supervisor Peskin, was attempting to ameliorate.

IV. Remarks from the Public (cont.)

D. Ernestine Weiss said that the issue of "hotelization" is not being addressed at the Golden Gateway complex. Many units are being used for offices so there is great usage of electricity and other utilities. Ms. Weiss feels that the PG&E passthrough regulations are "not a question of compromise, but a question of legality."

E. Genevieve Callejo, PRO Board member, spoke to Rules and Regulations Section 11.23 concerning provision by the Rent Board of interpreters and attorneys to low-income persons. Ms. Callejo informed the Board that PRO has run out of money to defend Parkmerced's pending petitions to pass through the cost of re-piping at the property. She stated that the tenants spent \$12,000 on representation during extensive hearings on the landlord's operating and maintenance expense petition. She said that Parkmerced is a "special case" because of the numerous petitions filed by the landlord, and that the Rent Board should obtain an attorney for the tenants.

F. Laura Traveler, past President of PRO, said that "indexing is the best way to go" at Parkmerced. Ms. Traveler maintains that an out-of-state controller calculates the utility bills in error; the tenants are paying passthroughs in addition to paying their PG&E bills; and, on the same floor, tenants are paying different passthroughs. Ms. Traveler asked whether the landlord would be able to provide spreadsheets as proof of their costs, or if they would be required to furnish copies of the actual bills.

G. Robert Pender told the Board that PRO has requested legal assistance pursuant to Rules Section 11.23. As Parkmerced has become increasingly diverse, with many non-English speaking tenants, there is a greater need for interpreters.

H. Joe Bravo, attorney for Parkmerced, said that he wanted to "dispel misconceptions and untruths." He told the Board that Parkmerced discovered overcharges in an audit, and brought them to the attention of the Administrative Law Judge. He also said that they have been endeavoring to rectify overcharges due to PG&E passthroughs, and have refunded \$80,000 since July of 2001. They are also currently meeting with the Office of the District Attorney in an attempt to rectify the situation.

IX. New Business

Rules and Regulations Section 11.23 Regarding Provision of Attorneys and Interpreters

Acting Executive Director Wolf brought to the Board's attention the language of Section 11.23 of the Rules and Regulations, which states: "If the Administrative Law Judge determines that a party cannot afford the services of an interpreter, the Board shall assist in obtaining an interpreter or attorney at no cost to the party." The Parkmerced Residents' Organization (PRO) has made a request for legal assistance pursuant to this Section. This issue will be calendared for discussion at the next meeting.

X. Calendar Items

May 25, 2004 - NO MEETING

June 1, 2004

6 appeal considerations (1 cont. from 5/4/04)

Old Business:

- A. Rules and Regs. Section 4.11
- B. Rules and Regs. Section 11.23

XI. Adjournment

President Wasserman adjourned the meeting at 8:43 p.m.

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Tuesday, 6:00 p.m.,
June 1, 2004
25 Van Ness Avenue, #70, Lower Level

AGENDA

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MAY 27 2004

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- LARRY BEACH BECKER I. Call to Order
DAVID GRUBER II. Roll Call
DEBORAH HENDERSON
JIM HURLEY III. Approval of the Minutes
ANTHONY JUSTMAN
CATHY MOSBRUCKER IV. Remarks from the Public
NEVEO MOSSER
BARTHOLOMEW MURPHY

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V. Consideration of Appeals

A. 935 Geary St. #1004 AT040049

One tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

B. 3636 Scott #303 AT040053

The tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

C. 4340 Anza AL040048

The landlord appeals the decision on the grounds that the allocation of capital improvement costs is unfair.

D. 540 Jones St. #401 AT040031
(postponed from 5/4/04)

The tenant appeals the decision denying claims of decreased housing services.

E. 3350 - 22nd St. AL040051

The Master Tenant appeals the decision refunding rent overpayments pursuant to Rules and Regulations Section 6.15C(3).

F. 1945 Broadway #303 AT040050



The tenant appeals the decision determining that there is no "Tenant in Occupancy" in the subject unit pursuant to Rules Section 1.21.

VI. Communications

VII. Director's Report

VIII. Old Business

A. Proposed Amendments to Rules and Regulations Section 4.11
Regarding PG&E Passthroughs

B. Rules and Regulations Section 11.23 Regarding Provision of
Attorneys and Interpreters

IV. Remarks from the Public (cont.)

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XI. Adjournment



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MAYOR

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VICE-PRESIDENT

MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,

Tuesday, June 1, 2004 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

DOCUMENTS DEPT.

JUN 25 2004

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DAVID GRUBER

DEBORAH HENDERSON

JIM HURLEY

ANTHONY JUSTMAN

CATHY MOSBRUCKER

NEVEO MOSSER

BARTHOLOMEW MURPHY

I. Call to Order

President Wasserman called the meeting to order at 6:02 p.m.

II. Roll Call

Commissioners Present:

Becker; Gruber; Henderson; Hurley;
Justman; Mosbrucker; Mosser;
Wasserman.

Staff Present:

Gartzman; Wolf.

Commissioner Marshall appeared on the record at 6:15 p.m.; Commissioner
Murphy arrived at the meeting at 6:50 p.m.

III. Approval of the Minutes

Acting Executive Director Wolf informed the Commissioners that Genevieve
Callejo of the Parkmerced Residents' Organization (PRO) asked that a correction
to the Minutes be made because the entirety of her comments were not reflected
in the Minutes.

MSC: To approve the Minutes of May 18, 2004.
(Becker/Mosbrucker: 5-0)

IV. Remarks from the Public

A. Carolyn Cahn, President of the Parkmerced Residents' Organization
(PRO), said that Rules Section 11.23 doesn't state that one needs to be suffering
a hardship in order to qualify for an attorney provided by the Rent Board. Ms.
Cahn believes that the Parkmerced tenants uncovered fraud and other mis-
representations by attending hearings at the Rent Board, and that these
irregularities wouldn't have been discovered otherwise. Ms. Cahn said that PRO

has exhausted their treasury on Rent Board representation, and that accommodations should be made for large groups of tenants.

B. Earl Brown of the SRO Collaborative appeared on behalf of tenant appellant Tom Alloway of 935 Geary St. #1004 (AT040049). Mr. Brown explained that Mr. Alloway is not able to read, and therefore he didn't follow up when he received the decision on his landlord's capital improvement petition. Since Mr. Alloway is on SSI, Mr. Brown asked that the Commissioners accept the appeal and remand the case for a hearing on his claim of financial hardship.

C. Tenant Tom Alloway informed the Board that everything Earl Brown said is true. Mr. Alloway told the Commissioners that he has a learning disability and is on a fixed income.

D. Tenant Olivia Wahlberg told the Board that she had been representing herself. Ms. Wahlberg experienced difficulties with estate and income property that she had.

V. Consideration of Appeals

A. 935 Geary St. #1004

AT040049

The tenant's appeal was filed 8-1/2 months late because the tenant is illiterate and could not read the Decision of Administrative Law Judge when it was sent to him.

MSC: To find good cause for the late filing of the appeal.
(Becker/Marshall: 5-0)

The landlord's petition for certification of capital improvement costs to 68 of 114 units was granted, resulting in a passthrough in the amount of \$5.34. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Marshall: 5-0)

B. 3636 Scott #303

AT040053

The landlord's petition for certification of capital improvement costs to 4 of 12 units was granted, resulting in a passthrough in the amount of \$266.75. One tenant appeals the decision on the grounds of financial hardship.

MSC: To deny the appeal. (Gruber/Hurley: 5-0)

C. 4340 Anza

AL040048

The landlords' petition for certification of capital improvement costs to 5 of 9 units was granted. However, the Administrative Law Judge determined that garages in the building also benefited from the work, and allocated the costs accordingly. On appeal, the landlords argue that: in terms of square footage and rental income, the garage spaces are not comparable to the residential units and only the residential units should be counted; any benefits accruing from the seismic strengthening project to the garages is incidental; costs of an exterior paint job in a prior case were not allocated to the garages; the issue of cost allocation was not mentioned at the hearing; and the effective date of the passthroughs should be September 1, 2003.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to obtain the square footage measurements of the residential and non-residential areas as well as to look at the issue of user fees for purposes of allocating the costs; to deny the appeal as to all other issues. (Marshall/Becker: 5-0)

D. 540 Jones St. #401

AT040031

(post. From 5/4/04)

The tenant's petition alleging decreased housing services in this residential hotel was denied because the Administrative Law Judge found that the tenant had failed to provide notice to the landlord regarding the alleged conditions. The tenant appeals, maintaining that: the Administrative Law Judge abused her discretion; a fictitious address was given for the landlord; inspection reports were submitted in 1988-89; and there were problems with the walls, plumbing, sink and vanity in the room that was the subject of the petition.

This appeal was withdrawn prior to the Board meeting.

E. 3350 – 22nd St.

AL040051

The subtenant filed a petition requesting a determination as to whether he was paying more than his share of the rent for the subject unit. The Administrative Law Judge found that the Master Tenant's bedroom is 60% larger than the subtenant's bedroom. With credit for amenities furnished by the Master Tenant, the Master Tenant was found liable to the subtenant in the amount of \$1,602.30. On appeal, the Master Tenant claims that: the square footage differential was not considered relative to the total square footage of the unit; evidence provided by the Master Tenant was ignored; the subtenant's bedroom has amenities that the Master Tenant's does not; the Master Tenant is in "substantial compliance"

with the intent of Rules and Regulations Section 6.15(c)(3); and the Decision presents the Master Tenant with a financial hardship.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to vacate the Decision and deny the tenant's petition. (Marshall/Becker: 5-0)

F. 1945 Broadway #303

AT040050

The landlord's petition seeking a determination pursuant to Rules and Regulations Section 1.21 was granted and the Administrative Law Judge found that there is no "Tenant in Occupancy" at the subject unit. On appeal, the tenant claims that her due process rights were violated because a requested postponement was not granted; and that she has met many of the indicia of principal place of residence enumerated in the regulation.

MSC: To accept the appeal and remand the case for a new hearing to be scheduled at the convenience of the landlord. Absent extraordinary circumstances, no continuances will be granted to the tenant. (Becker/Marshall: 4-1; Gruber dissenting)

VI. Communications

The Board received the following communications:

A. A copy of the Action Apartment case, concerning tenant harassment provisions of the Santa Monica rent law.

B. The office workload statistics for the month of April, 2004.

C. A June 1st letter from landlord Bill Quan regarding proposed amendments to Rules and Regulations Section 4.11.

VII. Director's Report

Acting Executive Director Wolf told the Board that the process of replacing prior Executive Director Joe Grubb is underway. President Wasserman, who is on the interview committee, said that four candidates have been interviewed thusfar.

VIII. Old Business

A. Proposed Amendments to Rules and Regulations Section 4.11 Regarding PG&E Passthroughs

At the meeting on May 18th, Neutral Commissioners Justman and Wasserman offered the following compromise proposal: for tenants who never had a utility passthrough or who had a passthrough in effect on 12/31/03 but there are not records to prove costs in the base year, the base year shall be 2002 but after five years the base year shall be moved up five years; and for continuing passthroughs where a base year prior to 2002 can be proved, there will be no indexing for years prior to 2002, but every year thereafter shall be indexed by the CPI. Commissioner Justman reported that he has been working with staff to draft this proposal, but that implementation problems have become apparent. Commissioner Justman will continue to confer with Senior Staff and will bring forward a draft proposal at a future meeting.

B. Rules and Regulations Section 11.23 Regarding Provision of Attorneys and Interpreters

MSC: To recuse Commissioner Becker from discussion of this Agenda item. (Gruber/Justman: 5-0)

The Parkmerced Residents' Organization (PRO) has requested that attorney representation be provided to them pursuant to the language of Rules Section 11.23, which provides as follows: "If the Administrative Law Judge determines that a party cannot afford the services of an interpreter, the Board shall assist in obtaining an interpreter or attorney (emphasis added) at no cost to the party." The Board briefly discussed this provision, and asked that staff draft an amendment to this Section to clarify that the Board shall provide interpreters but not attorneys to low-income individuals. Draft language will be provided to the Board for discussion at the next meeting.

IX. Calendar Items

June 8, 15 & 22, 2004 - NO MEETINGS

June 29, 2004

8 appeal considerations (1 post. from 6/15/04; 1 rescheduled from 7/6/04)

Old Business:

A. Rules and Regulations Section 4.11

B. Rules and Regulations Section 11.23

New Business: Rules and Regulations Section 2.13

X. Adjournment

President Wasserman adjourned the meeting at 7:07 p.m.



SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM
MAYOR

DELENE WOLF
ACTING EXECUTIVE DIRECTOR

Tuesday, 6:00 p.m.,
June 29, 2004
25 Van Ness Avenue, #70, Lower Level

AGENDA

DOCUMENTS DEPT.

LARRY BEACH BECKER
DAVID GRUBER
DEBORAH HENDERSON
JIM HURLEY
ANTHONY JUSTMAN
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

JUN 25 2004

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06-25-04 A10-21 RCVD

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- V. Consideration of Appeals

A. 323 Garces Dr. AT040056

One tenant appeals the decision granting rent increases based on increased operating expenses on the grounds of financial hardship.

B. 1840 Larkin St. #4 AT040057

The tenants in one unit appeal the decision granting rent increases based on increased operating expenses on the grounds of financial hardship.

C. 109 Serrano Dr. AL040063

The landlord appeals the decision certifying capital improvement costs but disallowing imposition of the passthrough until the term of an apparent one-year lease had expired.

D. 2583 - 29th Ave. AL040054
(rescheduled from 6/15/04)

The landlords appeal the decision granting a claim of unlawful rent increases.

E. 2809 Steiner St., Apt. #1 AL040061

The landlord appeals the decision granting a claim of unlawful rent increase.

F. 1458 – 12th Ave. AT040058

The tenants appeal the decision granting a claim of decreased housing services.

G. 1139 Market St. AL040055
(rescheduled from 7/6/04)

The landlord appeals the remand decision granting rent reductions due to the lack of a working interior sprinkler system in this residential hotel.

H. 501 Lake St. #103 AT040059

The tenant appeals the decision denying claims of unlawful rent increase and decreased housing services.

VI. Communications

VII. Director's Report

VIII. Old Business

A. Proposed Amendments to Rules and Regulations Section 4.11
Regarding PG&E Passthroughs

B. Rules and Regulations Section 11.23 Regarding Provision of
Attorneys and Interpreters

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

IX. New Business

Rules and Regulations Section 2.13 Regarding Commissioner
Compensation

- X. Calendar Items
- XI. Adjournment

ACCESSIBLE MEETING POLICY

American sign language interpreters will be available upon request. Please contact the Rent Board at 252-4648 at least 72 hours prior to the meeting. Late requests will be honored if possible. Translation services, sound enhancement or alternative formats are available if requested at least 72 hours prior to the meeting. Call 252-4641 to place your specific request.

會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4641。

Se pueden obtener servicios de traducción, ampliación de sonido, u otras formas de presentación si se solicitan por lo menos 72 horas antes de la reunión. Llame al 252.4641 para hacer su solicitud.

“Individuals with severe allergies, environmental illness, multiple chemical sensitivity or relate disabilities should call our accessibility hotline at (415) 554-8925 to discuss meeting accessibility. In order to assist the City’s efforts to accommodate such people, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.”

Rent Board Commission meetings are held at 25 Van Ness Avenue, Suite 70, lower level, and are wheel-chair accessible. The closest accessible BART station is located at Civic Center. Accessible MUNI lines serving this location are the 42 Downtown Loop, the 71 Haight/Noriega and the MUNI Metro at Van Ness and Market Street. For information about MUNI accessible services call 923-6142.

There is accessible parking available on adjacent streets (Oak Street and Hickory). Metered street parking is also available.

Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Ray Cabezas, has been designated to coordinate and carry out this agency’s compliance with the nondiscrimination requirement of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided thereunder, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845,

Know Your Rights Under the Sunshine Ordinance

Government’s duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people’s business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people’s review.

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**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM
MAYOR

DELENE WOLF
ACTING EXECUTIVE DIRECTOR

SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

Tuesday, 6:00 p.m.,
June 29, 2004

25 Van Ness Avenue, #70, Lower Level

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JUN 28 2004

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AMENDED AGENDA

LARRY BEACH BECKER
DAVID GRUBER
DEBORAH HENDERSON
JIM HURLEY
ANTHONY JUSTMAN
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public
- V. Consideration of Appeals

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

A. 323 Garces Dr. AT040056

One tenant appeals the decision granting rent increases based on increased operating expenses on the grounds of financial hardship.

B. 1840 Larkin St. #4 AT040057

The tenants in one unit appeal the decision granting rent increases based on increased operating expenses on the grounds of financial hardship.

C. 109 Serrano Dr. AL040063

The landlord appeals the decision certifying capital improvement costs but disallowing imposition of the passthrough until the term of an apparent one-year lease had expired.

D. 2583 - 29th Ave. AL040054
(rescheduled from 6/15/04)



The landlords appeal the decision granting a claim of unlawful rent increases.

E. 2809 Steiner St., Apt. #1 AL040061

The landlord appeals the decision granting a claim of unlawful rent increase.

F. 1458 – 12th Ave. AT040058

The tenants appeal the decision granting a claim of decreased housing services.

G. 1139 Market St. AL040055
(rescheduled from 7/6/04)

The landlord appeals the remand decision granting rent reductions due to the lack of a working interior sprinkler system in this residential hotel.

H. 501 Lake St. #103 AT040059

The tenant appeals the decision denying claims of unlawful rent increase and decreased housing services.

VI. Communications

VII. Director's Report

VIII. Old Business

A. Proposed Amendments to Rules and Regulations Section 4.11
Regarding PG&E Passthroughs

B. Rules and Regulations Section 11.23 Regarding Provision of
Attorneys and Interpreters

IV. Remarks from the Public (cont.)

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IX. New Business

A. Rules and Regulations Section 2.13 Regarding Commissioner Compensation

B. Calvo y Perez v. Superior Court (Superior Court Case No. 610406)

X. Calendar Items

XI. Adjournment

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SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

GAVIN NEWSOM
MAYOR

DELENE WOLF
ACTING EXECUTIVE DIRECTOR

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, June 29, 2004 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

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LARRY BEACH BECKER

DAVID GRUBER

DEBORAH HENDERSON

JIM HURLEY

ANTHONY JUSTMAN

CATHY MOSBRUCKER

NEVEO MOSSE

BARTHOLOMEW MURPHY

I. Call to Order

President Wasserman called the meeting to order at 6:09 p.m.

II. Roll Call

Commissioners Present:

Becker; Gruber; Henderson; Hurley;
Justman; Mosbrucker; Mosser;
Wasserman.

Commissioners not Present:

Murphy.

Staff Present:

Gartzman; Wolf.

Commissioner Marshall appeared on the record at 6:11 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of June 1, 2004.
(Becker/Gruber: 5-0)

IV. Remarks from the Public

A. Raymond Bokel, tenant at the National Hotel (AL040055), told the Board that his case was sent back to the Administrative Law Judge to see if the landlord filed for permits in a timely fashion, which she had not done. Mr. Bokel maintained that the City had the capacity to provide water for the sprinkler system, and said that the case had been going on for over a year.

B. Sarah Norr, representative of the National Hotel tenants, said that the case is simple and clear-cut, in that the deadlines were not met. In her opinion, the instant appeal provides no new arguments and is just a "cynical ploy" to get the tenants to "give up and move on." Ms. Norr said that this is the tenants' first experience with the Rent Board, and that they fear that the Board will not listen to low-income people, especially when opposed by a "fancy lawyer." Ms. Norr

asked that the Board make people believe in the process by holding the landlord accountable.

C. Robert Pender, Vice-President of the Parkmerced Residents Organization (PRO), read a letter that he wrote to the Board of Supervisors outlining the history of PRO and thanking the Supervisors for their hard work. Mr. Pender also expressed his support for the Parkmerced residents who had appeals before the Board at this evening's meeting.

D. Landlord Attorney Andrew Zachs, representing the landlord of the National Hotel, said that the case poses serious questions regarding the application of a new law. Mr. Zachs said that the property owner was not asking the Administrative Law Judge (ALJ) to re-write the Ordinance but, rather, to exercise his discretion. In Mr. Zachs' opinion, the ALJ failed to exercise his duty by not deciding the reasonableness of the Ordinance's timeframes. Mr. Zachs also pointed out that the Board of Supervisors established no Rent Ordinance remedy when they enacted the Sprinkler Ordinance. Mr. Zachs informed the Board that the landlord in the Calvo case (to be discussed later on the Board's Agenda) did not file briefs, and is asking that the Decision be vacated.

E. Tenant Frederick D. McAllister of the National Hotel thought it was a good thing when the case started, but he has not been able to rent a room or get a job since. Mr. McAllister is upset by the deterioration of the building he lives in, and he volunteers to help clean up.

F. Tenant Eve Prong of the National Hotel said that living in an SRO is hard enough. The tenants at the National are not asking for luxury items -- fire safety is a "big deal." Ms. Prong believes that, when laws are passed, she is expected to follow them or she gets in trouble.

G. Tenant Ernestine Weiss of the Golden Gateway Center told the Board that PG&E gave all landlords a rebate, but that her landlord has refused to disclose how much they were given or when the tenants are going to get it. Ms. Weiss said that the Golden Gateway operators are "slumlords" and "dictators" and asked what the Commissioners are going to do about it as a Board.

H. Paul Hogarth, Commissioner on the Berkeley Rent Board, spoke on behalf of the tenants at the National Hotel. Mr. Hogarth told the Board that six residential hotels on 6th Street having burned out in a decade led to the passage of the Sprinkler Ordinance. He informed the Commissioners that the preservation of affordable housing is part of their mandate. Mr. Hogarth feels that the landlord in this case has been "openly hostile" to their responsibilities and that justice in this case has been long delayed.

I. Rick Galbraith said that he is a "life-long SRO tenant." Mr. Galbraith defines insanity as doing the same thing over and over and expecting a different result. He believes it is time to move on, because "even death row inmates run out of appeals."

V. Consideration of Appeals

A. 323 Garces Dr.

AT040056

The tenant's appeal was filed one year and nine months late because the tenant did not realize she had a right to appeal the decision.

MSC: To recuse Commissioner Becker from consideration of this appeal. (Justman/Gruber: 5-0)

MSC: To find good cause for the late filing of the appeal.
(Justman/Henderson: 5-0)

The landlord's petition for rent increases based on increased operating expenses was granted. One tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Marshall/Henderson: 5-0)

B. 1840 Larkin St. #4

AT040057

The landlords' petition for certification of capital improvement costs and rent increases based on increased operating expenses was granted. The tenants in one unit appeal the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenants' claim of financial hardship. (Becker/Marshall: 5-0)

C. 109 Serrano Dr.

AL040063

The landlord's petition for certification of the costs of a new roof was granted. However, the Administrative Law Judge ruled that the passthrough had been imposed prematurely and could not be effective until expiration of the current one-year lease. The landlord appeals only as to that issue, arguing that the landlord did not renew the lease for a one-year term but, rather, as a month-to-month tenancy. The landlord asserts that the renewal letter makes no reference to a one-year lease term; the term of the lease that is identified had already expired; and there is no evidence in the record that the tenant relied upon any

representation that the renewal was for one year nor that the tenant wishes to be bound by such terms.

MSC: To recuse Commissioner Becker from consideration of this appeal. (Justman/Gruber: 5-0)

MSF: To deny the appeal. (Marshall/Henderson: 2-3; Gruber, Hurley, Justman dissenting)

MSC: To accept the appeal and remand the case to the Administrative Law Judge to vacate the Decision and find that this tenancy renewed on a month-to-month basis. (Justman/Gruber: 3-2; Henderson, Marshall dissenting)

D. 2583 – 29th Ave.

AL040054

(rescheduled from 6/15/04)

The tenant's petition alleging unlawful increases in rent was granted and the landlords were found liable to the tenant in the amount of \$7,187.63. On appeal, the landlords maintain that the charges for cable service should be kept separate from the base rent.

MSC: To deny the appeal. (Becker/Marshall: 5-0)

E. 2809 Steiner St., Apt. #1

AL040061

The landlord's appeal was filed one week late because the landlord had changed her mailing address.

MSC: To find good cause for the late filing of the appeal.
(Gruber/Hurley: 3-2; Becker, Marshall dissenting)

The tenant's petition alleging an unlawful increase in rent was granted. The tenant had been paying rent in the amount of \$1,445.00 rather than \$1,500.00 because the landlord had given her twelve \$55 discount coupons. The Administrative Law Judge found that the market rent for the unit was actually \$1,455.00, the amount actually paid by the tenant, and the "discounted" rent was simply a fiction to build in subsequent market increases. On appeal, the landlord argues that the lease signed by the tenant reflects the agreed-upon base rent of \$1,500.00, and that the "promotional credit coupons" do not change the amount of the rent.

MSC: To deny the appeal. (Justman/Marshall: 3-2; Gruber, Hurley dissenting)

F. 1458 – 12th Ave.

AT040058

The tenants' petition alleging decreased housing services due to the loss of a garage space was granted and the landlords were found liable to the tenants in the amount of \$150.00 per month. On appeal, the tenants argue that the courts have ruled that a garage space is an "inalienable right" and the new landlord does not have the right to take away the garage space.

MSC: To deny the appeal. (Gruber/Justman: 5-0)

G. 1139 Market St.

AL040055

(rescheduled from 7/6/04)

Six tenant petitions alleging decreased housing services due to the lack of an interior sprinkler system were granted and the landlord was found liable to the tenants in the amount of \$20.00 per month. The landlord's appeal of the decisions was granted and the case was remanded: "to determine whether the landlord acted reasonably considering the totality of the circumstances, including the fact that she failed to timely file the permit application, and to determine how much the City impeded performance, if at all. If it is established that the landlord has otherwise complied with the Ordinance, but that the City cannot provide water at the appropriate poundage, there shall be no on-going rent reduction." In the Decision on Remand, the Administrative Law Judge found that the landlord had failed to act reasonably under the circumstances and affirmed the original rent reductions, but failed to grant on-going rent reductions due to the City's failure to provide new water service to the property. The landlord appeals the remand decision on the grounds that: the Residential Hotel Sprinkler Ordinance (RHSO) created no rights or remedies for tenants under the Rent Ordinance; the Administrative Law Judge's failure to make independent findings regarding the reasonableness of the landlord's conduct constituted an abuse of discretion; the Rent Board's procedures do not provide adequate due process protections in that the landlord could not compel testimony from relevant City officials and agencies; hotel owners were unable to determine standards for compliance with the RHSO; a modern sprinkler system is not a housing service under the Ordinance; and the RHSO is not lawfully part of the City's housing code.

MSC: To recuse Commissioner Mosser from consideration of this appeal. (Marshall/Gruber: 5-0)

MSC: To deny the appeal. (Marshall/Becker: 3-2; Gruber, Hurley dissenting)

H. 501 Lake St. #103

AT040059

The tenant's petition alleging unlawful rent increases was denied because the Administrative Law Judge found that the tenant had moved into a continuing tenancy and the landlord retained the right to banked increases that had not been imposed. Claims of decreased housing services were also denied because it was found that the tenant failed to provide access, that the conditions were not substantial, and/or that the landlord had promptly remedied the problem. On appeal, the tenant claims that: the status of the eviction case between the parties was mis-stated in the Decision; the tenant signed a new lease with the landlord which established a new tenancy; a prior operating and maintenance expense increase was wrongful in that the landlord had installed coin-operated washing machines, but was also charging for increased water costs; it was the landlord's responsibility to repair the carpet; and the mold and mildew problem was on-going and never remedied by the landlord.

MSC: To deny the appeal. (Justman/Gruber: 3-2; Becker, Marshall dissenting)

VI. Communications

The Commissioners received the following communications:

A. Memoranda from staff regarding proposed amendments to Rules and Regulations Sections 2.15 and 11.23.

B. Commissioner Justman's proposed changes to the proposed amendments to Rules and Regulations Section 4.11.

C. Legislation amending Chapter 49 of the Administrative Code regarding interest on security deposits, signed by the Mayor on May 20th.

D. A June 21st article from the Daily Journal regarding an adverse ruling in a lawsuit filed by small property owners in San Francisco challenging the prior requirement that they pay 5% interest on security deposits. Unlike landlords in Santa Monica who were required to place the funds in a certain type of account, there was no such limitation in San Francisco. The Judge therefore ruled that no unconstitutional taking had occurred.

E. A letter from Attorney Stephen Collier of the Tenderloin Housing Clinic regarding the case of Calvo y Perez v. Superior Court.

VII. Director's Report

Acting Executive Director Delene Wolf informed the Board as follows:

A. The Rent Board's budget was approved by the Budget Committee of the Board of Supervisors on June 16th; the Fee Legislation was approved by the Finance Committee with a 50-50 split of the fee on June 29th; and a Charter amendment changing the way that Rent Board Commissioners are appointed was approved by the Rules Committee on June 21st. The Fee Legislation and Charter Amendment will go before the full Board of Supervisors on July 13th.

B. The Court of Appeal granted Santa Monica's petition for rehearing and has ordered additional briefing in the Action Apt. case concerning whether eviction notices are protected by the litigation privilege. The prior decision is not currently in effect.

C. Golden Gate Scavenger has revised their fee schedule to exclude 3 to 5 unit buildings from the "apartment rate" and is now charging the residential rate for those units. One landlord has reported that the scavenger costs for her 5-unit building will go from \$64.00 to \$204.00 per month. Sewage costs are also expected to rise by 11% this year. It is anticipated that landlords will be asking the Board for some form of relief from these cost increases.

VIII. Old Business

A. Proposed Amendments to Rules and Regulations Section 4.11 Regarding PG&E Passthroughs

Commissioner Justman reported that he has been working with Senior Administrative Law Judges Sandy Gartzman and Tim Lee to draft a compromise proposal. In so doing, Commissioner Justman tried to deal with the effects of inflation by establishing a new base year every five years and provide for some measure of fairness for landlords with existing passthroughs where the base year can be proved. Commissioner Justman distributed his new proposal and explained its major provisions to the Commissioners. These include:

1. The landlord must file a petition for approval of a utility passthrough, and the petition will be decided without a hearing unless the Administrative Law Judge determines that a hearing is necessary.
2. The initial base year for all tenancies in effect on December 31, 2003 shall be 2002, except a landlord with a current passthrough may petition the Board for approval of the earlier base year.
3. The initial base year for tenancies commencing after December 31, 2003 shall be the calendar year immediately preceding the year of the inception of the tenancy.

4. A landlord may petition the Board for approval of an alternate base year under specified circumstances where utility bills are not available.
5. Rather than index base year costs for inflation, a new base year will be established every five years when the initial base year is 2002 or later. When an earlier base year was elected and approved by the Board, the earlier base year utility costs will be adjusted every five years to reflect the increase or savings in utility costs during the five-year period.
6. Various adjustments will be made for laundry facilities depending on whether the laundry facilities are separately metered or a user fee is charged.

The proposal will be discussed further at the meeting on July 20th.

B. Rules and Regulations Section 11.23 Regarding Provision of Attorneys and Interpreters

MSC: To recuse Commissioner Becker from consideration of this issue. (Justman/Hurley: 5-0)

Pursuant to the Commissioners' request, staff drafted an amendment to Rules and Regulations Section 11.23 to clarify that the Board shall provide interpreters but not attorneys to low-income individuals. The proposed amendment reads as follows below:

Section 11.23 Legal Representation or Assistance of an Interpreter in Certain Cases

Both parties are entitled to legal representation at any stage of the proceeding. If it shall appear to the Administrative Law Judge that the issue or facts in a matter before him or her are so involved or intricate that in the interests of justice, of conserving time or of facilitating the preparation of an adequate record, a party ought to be represented by an attorney or an interpreter, the Administrative Law Judge may urge such party to procure such services. If the party agrees to procure an attorney or an interpreter, the Administrative Law Judge shall allow a party a reasonable period of time to do so. When this occurs, the opposing party shall be advised, and the matter may be continued for this purpose. If the Administrative Law Judge determines that a party cannot afford the services of an

interpreter, the Board shall assist in obtaining an interpreter ~~or attorney~~ at no cost to the party. The term "interpreter" shall include persons trained in the international language for the deaf.

MSC: To put the proposed amendment to Rules and Regulations Section 11.23 out for Public Hearing. (Justman/Hurley: 5-0)

IV. Remarks from the Public (cont.)

J. Ernestine Weiss told the Board that they are getting away from the whole point, which is that the annual CPI increase covers PG&E costs and landlords shouldn't get additional passthroughs. Ms. Weiss believes that "tenants are being ignored" and that this is why a new Rent Board is being proposed.

K. Laura Traveler of PRO told the Commissioners that the Parkmerced tenants are running up legal fees, and that Section 11.23 needs to stay in the Rules and Regulations. She also believes that the proposal regarding Rules Section 4.11 offered by Commissioner Justman is "totally new." Regarding the appeal at 109 Serrano Dr. (AL040063), Ms. Traveler contends that "ambiguity should be ruled against the person who created it" and the tenant should have prevailed in that case.

L. Attorney Joe Bravo, representing the landlord at Parkmerced, commented on Commissioner Justman's draft proposal regarding amendments to Section 4.11 as follows: the Commissioners should consider averaging utility costs over a 12-month period (Mr. Bravo said that he would provide a Memo on the merits of this approach); and there is no reason to distinguish between owners before and after 2002, since the jump in utility costs occurred in 2000 and 2001.

IX. New Business

A. Rules and Regulations Section 2.15 Regarding Commissioner Compensation

On March 23, 2004, Section 2.15 of the Rules and Regulations was amended to increase the per diem compensation from \$75 to \$100 if the meeting lasts for three or more hours, from \$50 to \$75 if the meeting lasts from one to three hours, and from \$25 to \$50 if the meeting lasts less than one hour. Subsequently, it came to staff's attention that Ordinance Section 37.4(h) limits per diem compensation to \$75 where the meeting lasts for six or more hours. Therefore, staff drafted a proposed amendment to Section 2.15 to reflect the \$75 maximum for meetings of six or more hours in conformity with the Ordinance, with which

the Commissioners concurred. Although no meeting since March 23rd lasted three or more hours, due to an accounting error, the Commissioners were paid \$100 for the meeting on April 20th. They agreed that \$25 shall be docked from their next paycheck to correct this mistake.

In addition, Ordinance Section 37.4(h) provides that: "The Commissioners shall adopt rules for payment of an equitable portion of this per diem if a meeting lasts less than six hours." Since the \$75 maximum has not been increased since the Ordinance was enacted in 1979, the Commissioners agreed to the amount of \$70 for any meeting lasting less than six hours. Staff shall draft the additional language, to be discussed further at the next meeting.

B. Calvo y Perez v. Superior Court (Superior Court Case No. 610406)

The Commissioners received a letter from Attorney Steve Collier of the Tenderloin Housing Clinic regarding an appellate decision granting his client's Writ of Mandate in an owner move-in eviction. The issue in the case was a conflict between the published version of the Rent Ordinance, which requires only a 25% ownership interest to evict for owner occupancy, and the September 1998 "Bierman Amendment" which increased the ownership interest to 50%. The Rent Board and the City Attorney have taken the position that because Proposition G was enacted after the Bierman Amendment, and did not change the 25% ownership requirement, the 25% ownership requirement superceded the Bierman Amendment. However, the court has now stated in an unpublished decision that because Proposition G did not address the percentage ownership requirement of Section 37.9(a)(8), the 50% ownership requirement of the Bierman Amendment had not been repealed.

The Board asked Acting Executive Director Wolf to request a City Attorney Opinion on this issue.

X. Calendar Items

July 6th & 13th, 2004 - NO MEETINGS

July 20, 2004

- 6:30 19 appeal considerations (14 from Parkmerced)
Public Hearing: Proposed Amendments to Rules Section 11.23
Old Business:
A. Rules and Regulations Section 4.11
B. Rules and Regulations Section 2.15

XI. Adjournment

President Wasserman adjourned the meeting at 8:25 p.m.



**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM
MAYOR

DELENE WOLF
ACTING EXECUTIVE DIRECTOR

SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

Tuesday, 6:00 p.m.,
July 20, 2004

25 Van Ness Avenue, #70, Lower Level

AGENDA

DOCUMENTS DEPT.

JUL 12 2004

SAN FRANCISCO
PUBLIC LIBRARY

LARRY BEACH BECKER

DAVID GRUBER

DEBORAH HENDERSON

JIM HURLEY

ANTHONY JUSTMAN

CATHY MOSBRUCKER

NEVEO MOSSER

BARTHOLOMEW MURPHY

I. Call to Order

II. Roll Call

III. Approval of the Minutes

IV. Remarks from the Public

NOTE: Pursuant to Section 2.13(c) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A.	108 Garces Dr.	AL040076
B.	117 Serrano Dr.	AL040077
C.	107 Serrano Dr.	AL040067
D.	402 Gonzalez Dr.	AL040078
E.	119 Crespi Ave.	AL040068
F.	70 Cambon Dr.	AL040069
G.	530 Gonzalez Dr.	AL040070
H.	27 Grijalva Dr.	AL040071
I.	24 Josepha Ave.	AL040072
J.	603 Gonzalez Dr.	AL040074
K.	108 Grijalva Dr.	AL040075
L.	7 Castello Ave.	AL040079
M.	228 Cardenas Ave.	AL040080
N.	308 Serrano Dr.	AL040081

The landlord appeals the decisions certifying capital improvement costs but disallowing imposition of the passthrough until the term of an apparent one-year lease had expired.

O. 235 O'Farrell St. #311 AT040062



The tenant appeals the decision partially granting claims of decreased housing services.

P. 445 O'Farrell St. #103, 420 & 426 AT040064 thru -66

Three tenants appeal the decision granting a claim of decreased housing services due to the landlord's failure to timely install an automatic fire sprinkler system in this residential hotel.

Q. 1611 Vallejo St. AT040060

The tenants appeal the decision partially granting claims of decreased housing services.

R. 2665 Judah St. #3 AL040082

The landlord appeals the decision granting claims of decreased housing services.

S. 2301 Francisco St. #205 AL040083

The landlord and tenant both appeal the decision denying claims of decreased housing services.

VI. Public Hearing

6:30 Proposed Amendments to Rules and Regulations Section 11.23
Regarding Provision of Attorneys and Interpreters

VII. Communications

VIII. Director's Report

IX. Old Business

A. Proposed Amendments to Rules and Regulations Section 4.11
Regarding PG&E Passthroughs

B. Proposed Amendments to Rules and Regulations Section 2.15
Regarding Commissioner Compensation

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- X. New Business
- XI. Calendar Items
- XII. Adjournment

ACCESSIBLE MEETING POLICY

American sign language interpreters will be available upon request. Please contact the Rent Board at 252-4648 at least 72 hours prior to the meeting. Late requests will be honored if possible. Translation services, sound enhancement or alternative formats are available if requested at least 72 hours prior to the meeting. Call 252-4641 to place your specific request.

會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4641。

Se pueden obtener servicios de traducción, ampliación de sonido, u otras formas de presentación si se solicitan por lo menos 72 horas antes de la reunión. Llame al 252.4641 para hacer su solicitud.

"Individuals with severe allergies, environmental illness, multiple chemical sensitivity or relate disabilities should call our accessibility hotline at (415) 554-8925 to discuss meeting accessibility. In order to assist the City's efforts to accommodate such people, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals."

Rent Board Commission meetings are held at 25 Van Ness Avenue, Suite 70, lower level, and are wheelchair accessible. The closest accessible BART station is located at Civic Center. Accessible MUNI lines serving this location are the 42 Downtown Loop, the 71 Haight/Noriega and the MUNI Metro at Van Ness and Market Street. For information about MUNI accessible services call 923-6142.

There is accessible parking available on adjacent streets (Oak Street and Hickory). Metered street parking is also available.

Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Ray Cabezas, has been designated to coordinate and carry out this agency's compliance with the nondiscrimination requirement of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided thereunder, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845,

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force at 554-4851.



July 2, 2004

GAVIN NEWSOM
MAYORSHARON K. WASSERMAN
PRESIDENT**NOTICE OF PUBLIC HEARING**DELENE WOLF
ACTING EXECUTIVE DIRECTORPOLLY MARSHALL
VICE-PRESIDENT

DOCUMENTS DEPT.

DATE:	July 20, 2004	JUL 6 - 2004
TIME:	6:30 P.M.	SAN FRANCISCO PUBLIC LIBRARY
PLACE:	25 VAN NESS AVENUE (AT MARKET ST.) SUITE 70, LOWER LEVEL SAN FRANCISCO, CALIFORNIA	

LARRY BEACH BECKER
DAVID GRUBER
DEBORAH HENDERSON
JIM HURLEY
ANTHONY JUSTMAN
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

THE RENT BOARD COMMISSIONERS INVITE THE PUBLIC TO COMMENT ON PROPOSED CHANGES TO THE RULES AND REGULATIONS GOVERNING THE RESIDENTIAL RENT STABILIZATION AND ARBITRATION ORDINANCE, CHAPTER 37 OF THE SAN FRANCISCO ADMINISTRATIVE CODE.

THE COMMISSION IS TAKING PUBLIC COMMENT ON A PROPOSED AMENDMENT TO RULES AND REGULATIONS SECTION 11.23. THE INTENT OF THE AMENDMENT IS TO CLARIFY THAT THE BOARD WILL PROVIDE INTERPRETERS, BUT NOT ATTORNEYS, TO LOW-INCOME PERSONS.

You may either comment at the Public Hearing and/or submit written comments. If you would like to submit written comments, it is requested that they be received at the Department no later than 5 p.m. on Tuesday, July 13, 2004, so that the Commissioners can be mailed your comments and review them prior to the hearing. Written comments may also be submitted at the hearing. Please submit 12 copies of your comments in order to facilitate their distribution. You will be able to address the Commissioners during the public comment period at the hearing.



SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

LARRY BEACH BECKER
DAVID GRUBER
DEBORAH HENDERSON
JIM HURLEY
ANTHONY JUSTMAN
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM
MAYOR

DELENE WOLF
ACTING EXECUTIVE DIRECTOR

Tuesday, July 20, 2004 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

DOCUMENTS DEPT.

JUL 30 2004

SAN FRANCISCO
PUBLIC LIBRARY

I. Call to Order

President Wasserman called the meeting to order at 6:13 p.m.

II. Roll Call

Commissioners Present: Becker; Gruber; Henderson; Hurley;
Marshall; Mosbrucker; Wasserman.
Commissioners not Present: Mosser
Staff Present: Gartzman; Lee.

Commissioner Justman appeared on the record at 6:17 p.m.
Commissioner Murphy appeared on the record at 6:30 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of June 29, 2004.
(Becker/Gruber: 5-0)

IV. Remarks from the Public

A. Sarah Norr of the Central City SRO Collaborative discussed the 445 O'Farrell Street appeals (AT040064 thru AT040066) concerning the landlord's untimely installation of an automatic fire sprinkler system 19 months after the City's deadline. Ms. Norr explained the substance of several letters she previously wrote to the Board concerning the appeals, alleging that the delay was not caused by the City's failure to process the permits, but by the landlord's failure to respond to the Fire Department's request for clarification for a five-month period. She believes that the tenants should get compensation for the period of construction in addition to the period of time before the work commenced because the landlord, not the City, caused the delay.

B. Robert Pender, Vice-President of the Parkmerced Residents' Organization, read a June 22, 2004 letter of appreciation that he wrote to the Board of Supervisors. Mr. Pender also read a speech that he prepared, but did not deliver, to the Board of Supervisors about changing the composition of the Rent Board.

C. Arun Mitra, representing the tenant of 235 O'Farrell (AT040062) asked the Board how a tenant could meet his burden of proof when the person who has the information you need is involved in the conflict with you. Mr. Mitra informed the Board that the tenant was only able to get measurements of his former room by chance, when he happened to see it was open, because the landlord would not give him access to the room. Mr. Mitra stated that the room the tenant had previously occupied was a bigger and better room than the one where he currently resides.

D. Ernestine Weiss, a tenant from the Golden Gateway Center, stated that Rules and Regulations Section 4.11 is "unjust" because it's illegal to charge tenants twice for PG&E – once in the CPI annual increase and once in the utility passthrough. Ms. Weiss believes that Section 4.11 "should be excised, not revised."

E. Janece Farless, a long-term tenant from The Villas Parkmerced, addressed the Board regarding the landlord's claim on appeal that the tenant's signature on her annual lease renewal letter was an agreement for a month-to-month tenancy, instead of a one-year lease renewal (AL040077). Ms. Farless informed the Board that she was surprised to find out that the landlord considers her a month-to-month tenant because she was never informed of that by the landlord, in writing or orally. She is concerned about being a month-to-month tenant if it means the landlord will be able to increase her rent at any time, without waiting until her next anniversary date.

V. Consideration of Appeals

A. 108 Garces Dr.	AL040076
B. 117 Serrano Dr.	AL040077
C. 107 Serrano Dr.	AL040067
D. 402 Gonzalez Dr.	AL040078
E. 119 Crespi Ave.	AL040068
F. 70 Cambon Dr.	AL040069
G. 530 Gonzalez Dr.	AL040070
H. 27 Grijalva Dr.	AL040071
I. 24 Josepha Ave.	AL040072
J. 603 Gonzalez Dr.	AL040074
K. 108 Grijalva Dr.	AL040075
L. 7 Castello Ave.	AL040079
M. 228 Cardenas Ave.	AL040080
N. 308 Serrano Dr.	AL040081

The landlord's petitions for certification of the costs of new roofs were granted. However, the Administrative Law Judge ruled that the passthroughs had been imposed prematurely and could not be effective until expiration of the current one-year leases. The landlord appeals only as to that issue, arguing that the landlord did not renew the leases for a one-year term but, rather, as month-to-month tenancies. The landlord asserts that the renewal letter makes no reference to a one-year lease term; the term of the lease that is identified had already expired; and there is no evidence in the record that the tenants relied upon any representation that the renewal was for one year nor that the tenants wish to be bound by such terms. The landlord also requests a technical correction to the Decision in Case No. L031219 at page 8, line 21 where unit 108 is incorrectly referred to as unit 114.

MSC: To recuse Commissioner Becker from consideration of this appeal. (Marshall/Justman: 5-0)

MSW: To accept the appeals and remand the cases to the Administrative Law Judge to vacate the Decisions as to the effective date of the capital improvement passthrough and to find that each of the subject tenancies was renewed on a month-to-month basis. (Justman/Gruber)

After discussing the landlord's appeals, the Board continued the appeals until the August 3, 2004 meeting to allow the parties the opportunity to address the question of whether the tenants' leases were renewed for a one-year term under Civil Code Section 1945 and such cases as Miller v. Stults 143 Cal. App. 2d 592 and Hagenbuch v. Kosky 142 Cal. App. 2d 296.

O. 235 O'Farrell St. #311

AT040062

The tenant's petition alleging a substantial decrease in housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$490.00. The tenant appeals the portion of the decision finding that his new room is not significantly smaller than his old room, and therefore does not constitute a substantial decrease in services. The tenant attaches scale drawings of both rooms to augment his claim.

MSC: To accept the appeal and remand the case for further hearing on the issue of room size, as well as a comparison of the quality and amenities of the tenant's former and current rooms, and to allow the tenant to amend the petition to state a value for the decreased housing service. (Becker/Marshall: 3-2; Gruber/Murphy dissenting)

P. 445 O'Farrell St. #103, 420 & 426

AT040064 thru AT040066

The tenants' appeals were filed three days late because their representative miscalculated the date that the appeals were due.

MSC: To find good cause for the late filing of the appeals.
(Becker/Marshall: 5-0)

Seven tenant petitions alleging decreased housing services were granted as to the lack of installation of automatic fire sprinklers in this residential hotel. The landlord was held liable to the tenants in the amount of \$20.00 per month for a 3-1/2 month period, after which time the Administrative Law Judge found that the City failed to process the permit application. The tenants in three units appeal on the issue of the fire sprinklers, asserting that the City's delay in issuing the permit was caused by the landlord having filled out the application incorrectly and then taking five months to respond to the City's request for clarification. The tenants argue that the landlord should be liable for rent reductions for the entire period of the delay plus the six-month period between issuance of the permit and completion of the sprinkler installation. Additionally, one tenant appeals on the issue of power outages in the building, claiming that she now has evidence that will show that this problem presented her with a significant hardship.

MSC: To accept the appeals on the issue of the fire sprinkler installation only and remand the case to the Administrative Law Judge for a hearing to consider the new evidence and information presented by the tenant appellants on appeal, as requested by the Administrative Law Judge. (Becker/Marshall: 5-0)

Q. 2665 Judah St. #3

AL040082

The tenant's petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenant in the amount of \$1,605.00. On appeal, the landlord claims that: the tenant has habitually paid the rent late, and is currently six months in arrears on rent; the tenant disturbs other tenants in the building; the tenant's rent is below market value; the amount of the rent reductions is arbitrary and not supported by any evidence; and the landlord would accept a settlement in the amount of half of the amount that was granted by the Administrative Law Judge.

MSC: To deny the appeal except to remand the case to the Administrative Law Judge for a Technical Correction to paragraph 8 of the Conclusions of Law and paragraph 2 of the Order. (Gruber/Becker: 5-0)

R. 2301 Francisco #205

AL040083 and AT040085

The tenant's petition alleging decreased housing services was denied. The Administrative Law Judge found that the right to use a dishwasher was a housing service included in the tenant's rent at the inception of the tenancy, but that no rent reduction was warranted because the tenant herself got rid of the dishwasher after it became inoperative. However, the Administrative Law Judge specified that the tenant could file a petition should the landlord not allow her to obtain a dishwasher in the future. The Administrative Law Judge also found that the right to have a washer and dryer was not a housing service provided at the inception of the tenancy. The tenant and landlord both appeal the decision. On appeal, the tenant claims that the Administrative Law Judge erred in finding that the washer and dryer did not constitute housing services. The landlord maintains that the tenant had falsely led him to believe that a previous manager had allowed her to have a dishwasher on the premises, but that no such permission had ever been given.

MSC: To deny both parties' appeals. (Marshall/Justman: 4-1; Gruber dissenting)

VI. Public Hearing

Proposed Amendments to Rules and Regulations Section 11.23 Regarding Provision of Attorneys and Interpreters.

The public hearing convened at 7:03 p.m. and concluded at 7:20 p.m. Four individuals testified as follows:

A. Robert Pender, Vice-President of the Parkmerced Residents Organization (PRO), stated that in the last three years, PRO has had \$13,000.00 in its treasury and has spent \$12,000.00 of it for the benefit of the Parkmerced tenants. PRO has no more money to spend to defend the Parkmerced tenants' interests at the Rent Board. They are asking the Rent Board to pay part of the cost to defend the Parkmerced tenants as a group since the landlord can afford to pay for an attorney, but the tenants cannot.

B. Ernestine Weiss, a tenant at the Golden Gateway Center, said that under the Constitution, people are entitled to an interpreter paid for by the Rent Board. However, she does not believe the Rent Board should pay for attorneys since people who cannot afford attorneys can go to legal aid or other organizations.

C. Janece Farless, a tenant at The Villas Parkmerced, agrees with Ms. Weiss' comments about interpreters but also feels that the "little person" should be provided a lawyer if one is needed.

D. Edwardo Bonsi, a tenant at the Golden Gateway Center, also agrees that the Rent Board should pay for interpreters. He said it would be great if the Rent Board could pay for attorneys, but at the very least, people should be given a referral to an attorney.

E. Laura Traveler, former president of the Parkmerced Residents Organization (PRO) and current PRO Board member, told the Board that the Parkmerced tenants need legal assistance at the many hearings being held on the landlord's rent increase petitions and that PRO has paid as much as it can. It is difficult to raise more money because most new tenants are students from neighboring San Francisco State University. At the time PRO requested the Rent Board to pay for its attorney, the existing regulation said that the Rent Board was required to pay for interpreters and attorneys if a person could not afford one. Ms. Traveler expressed her concern that the regulation was being amended only after PRO requested the Rent Board to pay for an attorney to represent the tenants.

After taking testimony from the public, the Commissioners made the following comments: Commissioner Marshall stated that the Rent Board will continue to pay for interpreters for parties who cannot afford one, but there is no money in the Rent Board's budget to pay for attorneys, much as the Board might like to be able to do so. Commissioner Mosbrucker stated that the proposed amendment is only a clarification of the existing regulation. In addition, she pointed out that there is no automatic right to an attorney in civil matters. Commissioner Henderson stated that the Rent Board does provide referrals to members of the public and will continue to do so. Commissioner Wasserman stated that the Rent Board fee would have to be increased in order for the Rent Board to pay for attorneys.

Upon conclusion of the public hearing, the Board passed the following motion:

MSC: To recuse Commissioner Becker from voting on the proposed amendment to Rules and Regulations Section 11.23.
(Marshall/Justman: 5-0)

MSC: To adopt the proposed amendment to Rules and Regulations Section 11.23. (Gruber/Marshall: 5-0)

This Section now reads as follows below:

11.23 Legal Representation of Assistance of an Interpreter in Certain Cases

Both parties are entitled to legal representation at any stage of the proceeding. If it shall appear to the Administrative Law Judge that the issue or facts in a matter before him or her are so involved or intricate that in the interests of justice, of conserving time or of facilitating the preparation of an adequate record, a

party ought to be represented by an attorney or an interpreter, the Administrative Law Judge may urge such party to procure such services. If the party agrees to procure an attorney or an interpreter, the Administrative Law Judge shall allow a party a reasonable period of time to do so. When this occurs, the opposing party shall be advised, and the matter may be continued for this purpose. If the Administrative Law Judge determines that a party cannot afford the services of an interpreter, the Board shall assist in obtaining an interpreter at no cost to the party. The term "interpreter" shall include persons trained in the international language for the deaf.

VII. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

- A. Rent Board monthly workload statistics for May and June 2004.
- B. A draft of proposed amendments to Rules and Regulations Section 2.15 (Per Diem Compensation).
- C. An anonymous letter from a tenant at The Villas Parkmerced.
- D. A copy of the Court of Appeal's decision in Jun Wai Tom v. City and County of San Francisco upholding the lower court's decision that the City ordinance regarding tenancies in common was an unconstitutional violation of the right of privacy.

VIII. Director's Report

Acting Executive Director Tim Lee informed the Board as follows:

- A. The Rent Board's budget was approved by the Board of Supervisors on July 20, 2004; the Fee Legislation was approved by the Board of Supervisors on July 13, 2004 with a 50-50 split of the fee between owners and tenants and allowing the annual fee to be based on the approved budget without a separate fee ordinance; a proposed ballot initiative amending the Charter to change the way that Rent Board Commissioners are appointed was rejected by the Board of Supervisors on July 13, 2004.
- B. We have not yet received the requested opinion from the City Attorney regarding the Calvo y Perez v. Superior Court decision.
- C. The decision in Jun Wai Tom v. City and County of San Francisco was certified for publication.

IX. Old Business

A. Proposed Amendments to Rules and Regulations Section 4.11
Regarding PG&E Passthroughs

The Board continued its discussion of Commissioner's Justman's revised proposed amendments to the utility passthrough regulations that were introduced at the meeting of June 29, 2004. Commissioner Murphy raised a concern about the type of evidence that might be required of a landlord who currently has a utility passthrough in effect for a tenant and who elects to continue to use the tenant's existing base year for future utility passthrough calculations. Commissioner Justman explained that the landlord would be required to produce source documents, such as PG&E bills, to prove the landlord's utility costs in the base year. However, the Administrative Law Judge could consider other records provided by the landlord, provided that such records would qualify as competent evidence under the California Evidence Code, such as the "business records" exception to the hearsay rule. If the landlord could not prove a tenant's existing base year costs with source documents or other competent evidence, the proposed regulation provides for a default base year of 2002. Commissioner Wasserman reminded the Board that since landlords will have to petition for approval of all utility passthroughs under the proposed regulations, tenants will be able to file appeals of decisions approving utility passthroughs on the basis of financial hardship. The Board then voted as follows below:

MSC: To put out for Public Hearing on August 24, 2004, the proposed amendments to Rules and Regulations Sections 1.19, 4.11 and 10.12 and the proposed new Rules and Regulations Sections 6.16 and 10.13 regarding utility passthroughs.
(Marshall/Justman: 5-0)

B. Proposed Amendments to Rules and Regulations Section 2.15
Regarding Commissioner Compensation

Pursuant to the Commissioners' request, staff drafted a revised amendment to Rules and Regulations Section 2.15 to conform the regulation to Ordinance Section 37.4(h). The proposed amendment reads as follows below:

Section 2.15 Per Diem Compensation

Each member shall receive ~~\$100.00~~ \$75.00 for each Board meeting attended if the meeting lasts for ~~three~~ six hours or more in a single twenty-four hour period, ~~\$75.00 if the meeting lasts from one to three hours in a single twenty-four hour period,~~ and ~~\$50.00~~ \$70.00 if the meeting lasts ~~one hour or less~~ than six hours in a single twenty-four hour period. If a member or the alternate is not in

attendance for an entire meeting, compensation shall be determined by reference to the actual aggregate time the member was in attendance in proportion to the total time of the meeting.

MSC: To put out for Public Hearing on August 24, 2004, the proposed amendments to Rules and Regulations Section 2.15.
(Justman/Becker: 5-0)

IV. Remarks from the Public (cont.)

F. Laura Traveler, former president of the Parkmerced Residents Organization (PRO) and current Board member, stated that the Board's comments on the utility passthrough base year proof are "right on" because spreadsheets can be fraudulent, unreliable evidence of base year costs. Ms. Traveler said that one of the issues for Parkmerced tenants is a problem with their base years. She thanked the Board for clearing this up.

G. Robert Pender, Vice-President of the Parkmerced Residents' Organization, told the Board that Genevieve and Ricardo Callejo have been working on their utility passthrough case for over a year and the Board should expect to see more such cases from Parkmerced. Mr. Pender said that his landlord "is a little confused."

H. Ernestine Weiss, a tenant of the Golden Gateway Center, stated that her landlord received a rebate from PG&E and refuses to disclose it. She commented that utility passthroughs are "double dipping" and that the law allowing it is "illegal." Ms. Weiss contends that tenants should not have to pay any utility passthrough since the increase in utility costs is already included in the annual increase.

I. Edwardo Bonsi, a tenant of the Golden Gateway Center, stated his belief that if a person cannot afford an attorney, the City should provide one. He questioned the Board's authority to change the law.

X. Calendar Items

July 27, 2004 – NO MEETING

August 3, 2004 – 21 appeal considerations (14 continued from 7/20/04)

August 10th & 17th, 2004 – NO MEETINGS

August 24, 2004 –
3 appeal considerations

6:30 Public Hearings:

- Proposed Amendments to Rules Section 2.15 Regarding Commissioner Compensation
- Proposed Amendments to Rules Sections 1.19, 4.11 and 10.12 and Proposed New Rules Sections 6.16 and 10.13 Regarding Utility Passthroughs

XI. Adjournment

President Wasserman adjourned the meeting at 7:58 p.m.



**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM
MAYOR

SHARON K. WASSERMAN
PRESIDENT

Tuesday, 6:00 p.m.,

August 3, 2004

25 Van Ness Avenue, #70, Lower Level

DELENE WOLF
ACTING EXECUTIVE DIRECTOR

POLLY MARSHALL
VICE-PRESIDENT

AGENDA

- LARRY BEACH BECKER I. Call to Order
DAVID GRUBER II. Roll Call
DEBORAH HENDERSON
JIM HURLEY III. Approval of the Minutes
ANTHONY JUSTMAN
CATHY MOSBRUCKER IV. Remarks from the Public
NEVEO MOSSER
BARTHOLOMEW MURPHY

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 101 Broderick St. #207 AT040089

One tenant appeals the decision granting certification of capital improvement costs on the grounds of financial hardship.

B. 825 Jones St. #6 AT040086

The tenant appeals the remand decision denying his claim of financial hardship.

C. 1611 Vallejo AT040060
(rescheduled from 7/20/04)

The tenants appeal the decision partially granting claims of decreased housing services.

D. 552 Arballo Dr. AL040084

The landlord appeals the decision determining that utility passthroughs were incorrectly calculated.

E. 120 - 27th St. AT040087

The tenant appeals two decisions partially granting claims of decreased housing services.

F. 345 Jones St. #401

AT040090

The landlord appeals the remand decision granting the tenants' claim of financial hardship.

G. 850 Geary St. #21 and #22

AT040091

The landlord appeals the decision granting the tenants' claims of decreased housing services.

H. 108 Garces Dr.

AL040076

I. 117 Serrano Dr.

AL040077

J. 107 Serrano Dr.

AL040067

K. 402 Gonzalez Dr.

AL040078

L. 119 Crespi Ave.

AL040068

M. 70 Cambon Dr.

AL040069

N. 530 Gonzalez Dr.

AL040070

O. 27 Grijalva Dr.

AL040071

P. 24 Josepha Ave.

AL040072

Q. 603 Gonzalez Dr.

AL040074

R. 108 Grijalva Dr.

AL040075

S. 7 Castello Ave.

AL040079

T. 228 Cardenas Ave.

AL040080

U. 308 Serrano Dr.

AL040081

(cont. from 7/20/04)

The landlord appeals the decisions certifying capital improvement costs but disallowing imposition of the passthrough until the term of an apparent one-year lease had expired.

VI. Communications

VII. Director's Report

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

VIII. New Business

IX. Calendar Items

X. Adjournment

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SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

GAVIN NEWSOM
MAYOR

DELENE WOLF
ACTING EXECUTIVE DIRECTOR

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, August 3, 2004 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

DOCUMENTS DEPT.

AUG 23 2004

SAN FRANCISCO
PUBLIC LIBRARY

LARRY BEACH BECKER
DAVID GRUBER
DEBORAH HENDERSON
JIM HURLEY
ANTHONY JUSTMAN
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

I. Call to Order

President Wasserman called the meeting to order at 6:10 p.m.

II. Roll Call

Commissioners Present: Becker; Gruber; Henderson; Hurley;
Mosbrucker; Mosser; Murphy; Wasserman.
Commissioners not Present: Marshall.
Staff Present: Gartzman; Wolf.

Commissioner Justman appeared on the record at 6:12 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of July 20, 2004.
(Becker/Gruber: 5-0)

IV. Remarks from the Public

A. Robert Pender, Vice-President of the Parkmerced Residents' Organization (PRO), told the Board that PG&E passthroughs at Parkmerced have been "all over the map." Ernestine Weiss says that the tenants at the Golden Gateway complex are having the same problems. Mr. Pender believes that tenants are being taken advantage of, because PG&E costs are supposed to be included in the rent. He feels sorry for landlords who are trying to do a decent job.

B. Carolyn Cahn, President of PRO, remarked on what she feels is mismanagement and dishonesty on the part of Olympic View Realty (OVR), the property managers at Parkmerced. She said that OVR's first operating expense petition lumped commercial property in with residential; this happened again later, but the tenants caught it. Ms. Cahn told the Board that tenants who are



paying for utilities in other units went to Small Claims Court and prevailed on this issue, but management has refused to rectify the problem for other tenants.

C. Joseph Bravo, Attorney for OVR, remarked regarding the case at 552 Arballo (AL040084), stating that no other tenants have filed petitions contesting their PG&E passthroughs. Mr. Bravo objected to the Memorandum issued by Administrative Law Judge (ALJ) Peter Kearns, claiming it to be a violation of due process. Mr. Bravo said that Mr. Kearns referred to items not in the record; was acting as an advocate, rather than a neutral; and that nothing in the Government Code allows an ALJ to do this. Mr. Bravo asked that the case be remanded to a new ALJ.

D. Laura Traveler, past President of PRO, received clarification from the Board regarding the Remarks from the Public portion of the Agenda: individuals are allowed to make any remarks they wish, including regarding individual cases, but the comments are not taken as evidence nor considered by the Commissioners in deciding an appeal.

E. Tenant Genevieve Callejo of 552 Arballo told the Board that Mr. Bravo did not timely serve her with his final brief in the case. She wanted the Commissioners to know that it was not Senior Administrative Law Judge Sandy Gartzman who called the District Attorney regarding alleged improprieties in PG&E passthroughs at Parkmerced – it was Ms. Callejo who did so because she couldn't get any documentation from OVR. It is not true that she never filed a petition.

F. Attorney Marilyn Kalman, representing the tenant at 120 – 27th St. (AT040087), told the Board that the tenant was only challenging the Finding regarding shared use of the premises. Ms. Kalman told the Board that there are jurisdictional issues in the case. Allegedly, after the Community Boards Program moved out, the landlord started using the room the Program used to occupy. When the tenant complained, the landlords upped their use. Ms. Kalman said that the tenant is being forced out of her rent controlled unit, and urged the Board to remand the case to consider the extent of the shared use.

V. Consideration of Appeals

A. 101 Broderick St. #207

AT040089

The landlord's petition for certification of capital improvement costs to 19 of 28 units was granted. The tenant in one unit appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Mosbrucker: 5-0)

B. 825 Jones St., Apt. 6

AT040086

The tenant's hardship appeal of a decision certifying capital improvement costs was accepted and remanded for hearing. The tenant's appeal was denied on remand. The Administrative Law Judge found that the tenant had failed to prove that a friend who was paying his rent was unable to also pay the passthrough amount; and that the tenant has chosen not to seek at least part-time work while he is going to vocational school. On appeal, the tenant maintains that: he is a full-time student and cannot work full or part-time; the Administrative Law Judge exhibited bias towards the tenant and he was treated differently than a neighbor with a hardship claim; the burden placed on him to prove his hardship claim was too onerous; and that he is elderly, ill, permanently disabled and destitute.

MSC: To deny the appeal except to remand the case for a necessary Technical Correction. (Murphy/Gruber: 5-0)

C. 1611 Vallejo

AT040060

(rescheduled from 7/20/04)

The tenants' petition alleging a substantial decrease in housing services was granted only as to claims of loss of a stovetop burner and functioning dishwasher. On appeal, the tenants claim that: after restoring the decreased housing service (dishwasher), the landlord should have been required to provide 30-day notice prior to restoration of the prior base rent amount; the Findings of the Administrative Law Judge are in error as to the refrigerator; the ALJ erroneously assumed that the ice machine malfunction was the fault of the tenants; the tenants gave oral notice to the landlord of the problem with the refrigerator door over several years; the landlord's witness was biased due to financial considerations; and the Decision is filled with irregularities.

MSC: To deny the appeal. (Gruber/Murphy: 5-0)

D. 552 Arballo Dr.

AL040084

The tenants' petition alleging that the landlord incorrectly calculated the PG&E passthrough was granted and the landlord was found liable to the tenants in the amount of \$302.77. Additionally, the current passthrough in the amount of \$23.17 was reduced to \$0.18. On appeal, the landlord asserts that: the landlord should not be required to provide PG&E bills and evidence establishing laundry room utility usage for base year 1979-1980 because the tenants did not previously challenge the claimed 1979-1980 base year utility costs and the

landlord did not own the property at that time; the landlord's utility cost spreadsheet which includes data "inherited" from prior owners is reliable evidence to establish utility costs between 1979-1999; the landlord did not discontinue the tenants' utility passthrough in 1987 when no passthrough was imposed, but rather preserved its 1979-1980 base year; the landlord's decision to continue the prior passthrough amount as a "place holder" instead of recalculating a new amount for the tenants' 2000-2001 passthrough should not result in the establishment of a new base year under Rules and Regulations Section 4.11(c); and, there is adequate evidence to establish base year and comparison year utility costs for each of the relevant passthrough periods.

MSC: To recuse Commissioner Becker from consideration of this appeal. (Mosbrucker/Justman: 5-0)

Consideration of this appeal was continued to the meeting on August 24th in order for the parties to be given an opportunity to respond to the Memorandum of Administrative Law Judge. A briefing schedule was established as follows: the landlord's brief must be filed and served on the tenant by August 10th; and any tenant response must be filed and served by August 17th. No additional pleadings received after those dates will be considered by the Board.

E. 120 – 27th St.

AT040087

The tenant's petition making many allegations of decreased housing services was granted only as to a slowly draining sink and loss of closet doors and the landlord was found liable to the tenant in the amount of \$175.00. Additionally, the tenant requested a determination as to whether her current rent is a proper amount. The Administrative Law Judge ordered the landlord to refund PG&E overpayments in the amount of \$5,613.96, as well as \$7,303.00 in rent overpayments. The tenant appeals the decision, claiming that: the Administrative Law Judge erred in finding that the tenant did not have exclusive use of the hallway, bathroom, kitchen and back porch in the subject unit; the landlords had no right to convert another bedroom in the unit into a "guest room"; and the tenant's claims of trespass and harassment were justified.

MSC: To recuse Commissioner Becker from consideration of this appeal. (Mosbrucker/Justman: 5-0)

MSC: To deny the appeal. (Murphy/Gruber: 3-2; Henderson, Mosbrucker dissenting)

F. 345 Jones Street #401

AL040090

The tenants' hardship appeal of a decision certifying capital improvement costs was accepted and remanded for hearing. The tenants' appeal was granted on remand. The Administrative Law Judge found that there were four people living in the unit, two of whom are subtenants who contribute to the monthly rent. The subtenants' rent contributions were treated as part of the tenants' gross income for purposes of determining financial hardship. On appeal, the landlord contends that since the definition of "tenant" in the Ordinance includes subtenant, the Administrative Law Judge should have considered the subtenants' income when determining the tenants' financial hardship. The tenants oppose the appeal, claiming that it is the Board's policy that subtenants need not fill out hardship applications or document their incomes, since they are not legally responsible for rent payments.

MSC: To deny the appeal. (Becker/Justman: 3-2; Gruber, Murphy dissenting)

G. 850 Geary Street #21 and #22

AL040091

The landlord's appeal was filed one day late because he didn't have time to prepare the appeal earlier and because he assumed that he had fifteen days after receiving the decision to file the appeal.

MSC: To find good cause for the late filing of the appeal.
(Becker/Murphy: 5-0)

The tenants' petitions alleging decreased housing services were granted and the landlord was found liable to the tenants in the sum of \$1,882.50 per unit for the loss of use of the on site coin-operated washer and dryer and for deteriorated hallway and stairway carpeting. In addition, the tenants' base rents were reduced by \$30.00 per month until the landlord restores use of a washer and dryer within the subject building. On appeal, the landlord claims that: laundry facilities were not provided as a housing service, but as a gratuitous act by the landlord; since the tenant of unit #21 is single and the tenants of unit #22 are a childless couple, it is not credible that they each do ten loads of laundry a month; the tenants did not use the laundry machines in the building as often as they claimed at the hearing; the carpeting was worn and frayed when the tenancies commenced and the tenants accepted the condition of the carpeting by agreeing to pay the rent and move into the building; this building is occupied by low income and retired people who cannot afford and do not want to pay for improvements unless they are absolutely necessary; the rent reduction for the carpeting is excessive, particularly since it was in the common area of the building and not inside the tenants' units; photographs of the carpeting submitted by the tenants were staged; and the Administrative Law Judge misunderstood the dates of carpet repair.

MSC: To deny the appeal. (Gruber/Murphy: 5-0)

H. 108 Garces Dr.	AL040076
I. 117 Serrano Dr.	AL040077
J. 107 Serrano Dr.	AL040067
K. 402 Gonzalez Dr.	AL040078
L. 119 Crespi Ave.	AL040068
M. 70 Cambon Dr.	AL040069
N. 530 Gonzalez Dr.	AL040070
O. 27 Grijalva Dr.	AL040071
P. 24 Josepha Ave.	AL040072
Q. 603 Gonzalez Dr.	AL040074
R. 108 Grijalva Dr.	AL040075
S. 7 Castello Ave.	AL040079
T. 228 Cardenas Ave.	AL040080
U. 308 Serrano Dr.	AL040081

(cont. from 7/20/04)

The landlord's petitions for certification of the costs of new roofs were granted. However, the Administrative Law Judge ruled that the passthroughs had been imposed prematurely and could not be effective until expiration of the current one-year leases. The landlord appeals only as to that issue, arguing that the landlord did not renew the leases for a one-year term but, rather, as month-to-month tenancies. The landlord asserts that the renewal letter makes no reference to a one-year lease term; the term of the lease that is identified had already expired; and there is no evidence in the record that the tenants relied upon any representation that the renewal was for one year nor that the tenants wish to be bound by such terms. The landlord also requests a technical correction to the Decision in Case No. L031219 at page 8, line 21 where unit 108 is incorrectly referred to as unit 114. After discussing the landlord's appeals at its July 20th meeting, the Board continued the appeals until the August 3, 2004 meeting to allow the parties the opportunity to address the question of whether the tenants' leases were renewed for a one-year term under Civil Code Section 1945 and such cases as Miller v. Stults 143 Cal. App. 2d 592 and Hagenbuch v. Kosky 142 Cal. App. 2d 296.

MSC: To recuse Commissioner Becker from consideration of these appeals. (Mosbrucker/Justman: 5-0)

MSC: To accept the appeals and remand the cases to the Administrative Law Judge to vacate the Decisions as to the effective dates of the capital improvement passthroughs and to find that each of the subject tenancies was renewed on a month-to-month basis and for a necessary Technical Correction to the Decision in Case No. L031219. (Gruber/Murphy: 3-2; Henderson, Mosbrucker dissenting)

VI. Communications

The Commissioners received copies of Notices for the two Public Hearings scheduled for August 24th and an e-mail from the Office of the City Attorney regarding restrictions on participation in certain political activities by City officers and employees.

VII. Director's Report

At the meeting on June 29th, the Commissioners had discussed the case of Calvo y Perez v. Superior Court (Sup. Ct. Case No. 610406) pursuant to a letter from Attorney Steve Collier of the Tenderloin Housing Clinic. In that appellate decision, the Court granted Mr. Collier's client's Writ of Mandate in an owner move-in eviction, finding that because Proposition G did not address the percentage ownership requirement of Ordinance Section 37.9(a)(8), the 50% ownership requirement of the Bierman Amendment had not been repealed. The Board asked for an Opinion on this issue from the Office of the City Attorney. Acting Executive Director Delene Wolf informed the Board that, in the opinion of the City Attorney, the Calvo Decision is not binding on the Rent Board because it is an unpublished decision in a case between two private parties, and the City/Rent Board were not parties. Mr. Collier will be so informed.

IV. Remarks from the Public (cont.)

G. Bill Luque asked what happened regarding the appeal for 101 Broderick St. #207 (AT040089), as well as requesting clarification regarding the Board's meeting schedule.

H. Laura Traveler told the Board that she received ALJ Kearns' Memorandum on July 30th. Regarding the Parkmerced cases where the term of the lease renewals were at issue, Ms. Traveler reminded the Board that tenant Janece Fearless said that she was not told that her year lease would be going month-to-month. Ms. Traveler believes that if anniversary dates are not adhered to, the landlord will go up on the rent. She also remarked on all the work that tenant Genevieve Callejo at 552 Arballo has put in on her case, and said that is what tenants without money are up against.

I. Robert Pender seconded Laura Traveler's remarks. He said that many "old-timers" cannot get down to the Rent Board to file petitions, and he told the Commissioners that they are not honoring their fathers and mothers.

J. Commissioner Henderson admonished her fellow Commissioners to watch what they say in terms of depicting groups of people.

VIII. Calendar Items

August 10th & 17th, 2004 - NO MEETINGS

August 24, 2004

5 appeal considerations (1 cont. from 8/3/04)

Public Hearings:

- 6:30 Proposed Amendments to Rules Sections 1.19, 4.11 and 10.12 and
Proposed New Rules Sections 6.16 and 10.13 Regarding Utility
Passthroughs
- 7:00 Proposed Amendments to Rules Section 2.15 Regarding Commissioner
Compensation

IX. Adjournment

President Wasserman adjourned the meeting at 7:53 p.m.



**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM
MAYOR

SHARON K. WASSERMAN
PRESIDENT

Tuesday, 6:00 p.m.,
August 24, 2004

DELENE WOLF
ACTING EXECUTIVE DIRECTOR

POLLY MARSHALL
VICE-PRESIDENT

25 Van Ness Avenue, #70, Lower Level

AGENDA

DOCUMENTS DEPT.

AUG 23 2004

SAN FRANCISCO
PUBLIC LIBRARY

08-23-04 10:22 RCVD

LARRY BEACH BECKER
DAVID GRUBER
DEBORAH HENDERSON
JIM HURLEY
ANTHONY JUSTMAN
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

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- V. Consideration of Appeals

A. 1261 Goettingen St. AT040096

The tenant appeals the dismissal of a petition alleging decreased housing services, claiming non-receipt of the Notice of Hearing.

B. 530-1/2 Noe St. AL040092

The landlord appeals the decision granting a claim of unlawful rent increases.

C. 1408 California #201 AT040093

The tenant appeals the denial of a petition alleging decreased housing services due to alleged excessive noise from another unit.

D. 201 Leavenworth #411 AT040094

The tenant appeals the denial of a petition claiming decreased housing services.

E. 552 Arballo Dr. AL040084
(cont. from 8/3/04)

The landlord appeals the decision determining that utility passthroughs were incorrectly calculated.

- VI. Public Hearings



6:30 Proposed Amendments to Rules and Regulations Sections 1.19, 4.11 and 10.12 and Proposed New Rules Sections 6.16 and 10.13 Regarding Utility Passthroughs

7:00 Proposed Amendments to Rules and Regulations Section 2.15 Regarding Commissioner Compensation

VII. Communications

VIII. Director's Report

IX. Old Business

IV. Remarks from the Public (cont.)

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AUG - 5 2004

City and County of San Francisco

SAN FRANCISCO
PUBLIC LIBRARYResidential Rent Stabilization
and Arbitration Board

August 3, 2004

GAVIN NEWSOM
MAYORSHARON K. WASSERMAN
PRESIDENTDELENE WOLF
ACTING EXECUTIVE DIRECTORPOLLY MARSHALL
VICE-PRESIDENT**NOTICE OF PUBLIC HEARING**

DATE: AUGUST 24, 2004

TIME: 6:30 P.M.

PLACE: 25 VAN NESS AVENUE (AT MARKET STREET)
SUITE 70, LOWER LEVEL
SAN FRANCISCO, CALIFORNIA

LARRY BEACH BECKER
DAVID GRUBER
DEBORAH HENDERSON
JIM HURLEY
ANTHONY JUSTMAN
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

THE RENT BOARD COMMISSIONERS INVITE THE PUBLIC TO COMMENT ON PROPOSED CHANGES TO THE RULES AND REGULATIONS GOVERNING THE RESIDENTIAL RENT STABILIZATION AND ARBITRATION ORDINANCE, CHAPTER 37 OF THE SAN FRANCISCO ADMINISTRATIVE CODE.

THE COMMISSION IS TAKING PUBLIC COMMENT ON PROPOSED CHANGES TO THE UTILITY PASSTHROUGH REGULATIONS, INCLUDING THE AMENDMENT OF EXISTING SECTIONS 1.19, 4.11 AND 10.12 AND THE ADDITION OF NEW SECTIONS 6.16 AND 10.13, ALL OF WHICH ARE ATTACHED TO THIS NOTICE.

THE PROPOSED CHANGES ARE SUMMARIZED AS FOLLOWS:

- Amend section 1.19 (*Definition of Tenant's Utilities*) to include a reference to new Section 6.16 and to change the reference to Ordinance Section 37.2(o) to the correct Section 37.2(q).
- Amend Section 4.11 (*Computation of Passthrough of Gas and Electricity*) to limit its applicability to situations where the notice of increase for the utility passthrough was served prior to or on the effective date of new Section 6.16 and to require that passthroughs calculated pursuant to section 4.11 be discontinued twelve months after imposition or by 60 days after the effective date of section 6.16, whichever is later.
- Add Section 6.16 (*Utility Passthrough*) to provide for a new method of calculating utility passthroughs for situations where the notice of increase for the utility passthrough was served after the effective date of new Section 6.16, including, but not limited to: a requirement that the landlord file a petition for approval of a utility passthrough before giving the notice of rent increase,



which petition will be decided without a hearing unless the Administrative Law Judge determines that a hearing is necessary; the initial base year for all tenancies in effect on December 31, 2003 shall be 2002, except a landlord with a current passthrough may petition the board for approval of the earlier base year; the initial base year for tenancies commencing after December 31, 2003 shall be the calendar year immediately preceding the year of the inception of the tenancy; the landlord may petition for approval of an alternate base year under specified circumstances where utility bills are not available; where the initial base year is 2002 or later, a new base year is established at the end of every fifth calendar year after the initial base year; where the initial base year is prior to 2002, the base year utility costs must be adjusted every five years beginning with petitions filed in 2009; various adjustments will be made for utility costs for laundry facilities where the laundry facilities are not separately metered and a user fee is charged; for purposes of allocating utility costs, each parking/garage space included in a tenant's rental or for which a user fee is charged shall be counted as one room, and commercial areas such as management offices and retail space shall also be included in the room count; utility costs shall be allocated to each unit based on the number of rooms in a unit plus the number of garage spaces included in the tenant's rental or for which a user fee is charged; the utility passthrough may be imposed only at the time of an annual increase and must be discontinued after twelve months.

- To amend Section 10.12 (*Documentation of Gas and Electrical Increases*) which provides for a tenant petition to challenge a utility passthrough calculation, by limiting its applicability to situations where the notice of increase for the utility passthrough was served prior to or on the effective date of new Section 6.16.
- To add Section 10.13 (*Improper Utility Passthrough*) to provide for a tenant petition to challenge a utility passthrough where the notice of increase for the utility passthrough was served after the effective date of new section 6.16 and the landlord failed to file a petition under section 6.16 or failed to discontinue the utility passthrough after twelve months.

You may either comment at the Public Hearing and/or submit written comments. If you would like to submit written comments, it is requested that they be received at the Department NO LATER THAN 5:00 P.M. ON MONDAY, AUGUST 16TH, 2004, so that the Commissioners can be mailed your comments and review them prior to the hearing. Written comments may also be submitted at the hearing. Please submit 12 copies of your comments in order to facilitate their distribution. You will be able to address the Commissioners during the public comment period at the hearing.

1 PROPOSED AMENDMENTS TO THE RENT BOARD RULES AND
2 REGULATIONS REGARDING UTILITY PASSTHROUGHS

3 [additions in double underline; deletions in strikethrough]

4 – Amend Section 1.19 to reference new Section 6.16 as well as Section 4.11. Also amend the
5 reference to Ordinance Section 37.2(o) to reflect the correct section of 37.2(q).

6 **Section 1.19 Tenant's Utilities**

7 For the purpose of Ordinance Section 37.2(~~o~~) (q) and Sections 4.11 and 6.16
8 of these Rules, "Tenant's Utilities" means charges for natural gas or electricity provided
9 by Pacific Gas and Electric Company directly to the unit occupied by the tenant or to
10 the building in which the unit is located and benefiting the tenant, whether paid by the
11 tenant alone, by the landlord alone, or part by the tenant and part by the landlord.

12
13 – Amend Section 4.11 by adding the following language to the beginning of Section 4.11:

14 **Section 4.11 Computation of Passthrough of Gas and Electricity**

15 The following provisions shall apply to utility passthroughs where the notice of
16 rent increase for the utility passthrough was served prior to or on [the effective date
17 of Section 6.16], except that with respect to such utility passthroughs, the
18 passthrough shall be discontinued twelve months after it was imposed or by [60 days
19 after the effective date of Section 6.16], whichever is later.

20 (a) No landlord may pass through any increase in the cost of the utilities to a
21 tenant until the tenant has occupied one or more units in the subject building for one
22 continuous year. Each utility passthrough may be charged to the tenant only at the
23 time of an annual rent increase.

24 (b) Where a landlord pays for gas, electricity, and/or steam and seeks to
25 recover the increase in the cost of these utilities from tenants, the landlord shall
26 calculate the amount of such increase by using either of the following two methods,
27 both of which should always yield the same results:
28

(1) Method 1: Compile the utilities receipts for the two calendar years preceding the first noticing of the utility passthrough. The calendar year immediately preceding the noticing shall be referred to as the "comparison year;" the calendar year preceding the "comparison year" shall be referred to as the "base year." The base year will remain the same for all future calculations, except where the pass through is discontinued pursuant to subsection (c) below. Different tenants in the same building may have different base years depending on when they moved into the building and when utility increases were first passed through to them.

(i) Calculate the total utility cost for the comparison year and the total utility cost for the base year.

(ii) Subtract the total base year utility cost from the total comparison year utility cost. If there is no increase or if there has been a decrease, no pass through for the current calendar year is allowed and any increase levied in a prior year must be discontinued.

(iii) Divide the resulting figure, if greater than zero, by 12 to determine the average monthly utility increase or decrease for the entire building.

(iv) Divide the average monthly utility increase or decrease by the number of rooms in the building. For the purposes of this section the number of rooms in a building shall be calculated by presuming that single rooms without kitchens are one room units, studios are two room units, one bedroom units without a separate dining room are three room units, and so on.

(v) If a utility pass through has been instituted, subsequent passthroughs shall be determined for the immediately following year by calculating the utility cost for the calendar year preceding the noticing of the passthrough. This amount shall become the updated comparison year figure. The passthrough shall then be calculated in accordance with Rules and Regulations Sections 4.11(b)(1)(ii) through 4.11(b)(1)(iv).

1 (2) Method 2: Alternatively, the landlord may choose, in subsequent
2 years, to use the prior year's "comparison year" as the current base year and subtract
3 the updated base year amount from the new comparison year total utility cost. The
4 resulting amount would be added to the prior year's total utility passthrough. The
5 passthrough shall then be calculated in accordance with Rules and Regulations Sections
6 4.11(b)(1)(iii) through 4.11(b)(1)(v).

7 (c) Until such time as an annual rent increase is noticed the current pass
8 through shall remain in effect. However, if a landlord does not recalculate and re-notice
9 the pass through at the subsequent annual rent increase, the entire pass through is
10 discontinued until recalculated and re-noticed. At such time as a new pass through is
11 calculated and noticed, a new base year is established which shall be the calendar year
12 preceding the new comparison year.

13 (d) In the event that more than one year has passed since the imposition of
14 the last PG&E pass through, the landlord must adjust for any increases or decreases
15 that have occurred since the last pass through was implemented, so that the tenant
16 receives the benefit of any utility decrease that occurred in the intervening period.

17 (e) Nothing in this section or in these Rules and Regulations shall be
18 interpreted as requiring any landlord to pass through any utility increase or to raise any
19 tenant's rent. However, where the utility costs decrease in years subsequent to the
20 passing through of an increase, the tenant must be given the benefit of such decrease
21 calculated in the same manner as any increase passed through under Ordinance Section
22 37.2(n). A tenant may petition the Board for an arbitration hearing whenever a pass
23 through charge has been noticed or is in effect and the tenant protests the amount
24 being charged or the calculation procedure being used by the landlord. If the
25 comparison year utility costs fall below the base year costs, the landlord shall not be
26 required to reduce the rent beyond eliminating any utility pass through made in prior
27 years.

1 (f) If the methods set forth for an increase (or decrease) in utilities in
2 subsection (b) of this Section cannot be applied for reasons beyond the control of the
3 landlord, and in the absence of a relevant agreement between the landlord and the
4 tenant, the landlord may petition the Board for an arbitration hearing to establish an
5 appropriate alternative method, which shall be used for all following years unless
6 another method is approved by the Board.

7 (g) The amount of rent due from the tenant for any utility pass through shall
8 be due on the same date as a rent payment normally would be due.

9 (h) No amount passed through to the tenant as a utility increase shall be
10 included in the tenant's base rent for purposes of calculation of the amount of rent
11 increases allowable under the Ordinance and these Rules and Regulations.

12 (i) The provisions of this Section shall be deemed a part of every rental
13 agreement or lease, written or oral, for the possession of a rental unit subject to the
14 Ordinance unless the landlord and the tenant agree that the landlord will not pass
15 through any utility increases, in which case such agreement will be binding on the
16 landlord and on any successor owner of the building, unless such agreement is changed
17 in accordance with applicable law.

18 (j) Where a utility increase has been lawfully passed through to the tenant, a
19 change in the ownership of the building in which the tenant's unit is located will not
20 affect the tenant's liability to pay the amount passed through or the tenant's
21 entitlement to the benefit of decreases in the utilities costs.

22
23 – Add the following new Section 6.16:

24 **Section 6.16 Utility Passthrough**

25 The following provisions shall apply to utility passthroughs where the notice of
26 rent increase for the utility passthrough was served after [the effective date of Section
27 6.16]:

1 Different tenants in the same property may have different initial "base years"
2 depending on when they moved into the property or whether the Board has approved
3 use of an earlier "base year" pursuant to subsection (b)(ii) above or use of an alternate
4 "base year" pursuant to subsection (b)(iv) above. The initial "base year" utility costs
5 shall be adjusted every five years as follows:

6 (i) Where the initial "base year" is 2002 or later, a new "base year" is
7 established at the end of every fifth calendar year after the initial "base year". For
8 example, where the initial "base year" is 2002, the new "base year" shall be 2007 for
9 petitions filed between January 1, 2009 and December 31, 2013. If the tenancy
10 continues for an additional five years, the "base year" will become 2012 for petitions
11 filed between January 1, 2014 and December 31, 2018, and so on. For another
12 example, where the initial "base year" is 2004, the new "base year" shall be 2009 for
13 petitions filed between January 1, 2011 and December 31, 2015. If the tenancy
14 continues for an additional five years, the "base year" will become 2014 for petitions
15 filed between January 1, 2016 and December 31, 2020.

16 (ii) Where the initial "base year" is prior to 2002 and has been
17 approved by the Board pursuant to subsection (b)(ii) above, the landlord may elect to
18 keep said "base year" for purposes of future utility passthrough calculations without
19 regard to subsection (c)(i) above. However, in such a case, the landlord must adjust the
20 "base year" utility costs every five years beginning with utility passthrough petitions
21 filed in 2009. The first "base year" adjustment shall equal the difference, if more than
22 zero, between 2003 utility costs and 2007 utility costs, and it shall be added to the
23 "base year" utility cost used by the landlord. This "base year" adjustment shall be in
24 effect for petitions filed between January 1, 2009 and December 31, 2013. Every fifth
25 year thereafter (i.e. 2014, 2019, etc.), the landlord's petition shall include another
26 "base year" adjustment equal to the difference in utility costs, if more than zero, for
27 each subsequent five-year period (e.g., 2008 and 2012, 2013 and 2017, etc.). If utility

costs decrease during any five-year adjustment period, then no adjustment shall be required to the "base year" utility costs, but the landlord must deduct the amount of the decrease from the difference between the initial "base year" utility costs and the new "comparison year" utility costs. For example:

(A) Suppose a tenant's approved "base year" is 1986, and the 1986 utility costs are \$15,000. In 2009, the landlord must calculate the difference between the 2003 utility costs (\$20,000) and the 2007 utility costs (\$30,000). Since utility costs increased between 2003 and 2007, the landlord must add the increase (\$10,000 [\$30,000 minus \$20,000]) to the initial "base year" utility costs (\$15,000) and then compare the adjusted "base year" utility costs (\$25,000 [\$10,000 + \$15,000]) to the 2009 "comparison year" utility costs (\$35,000) in order to calculate the new utility passthrough (\$10,000 [\$35,000 minus \$25,000]).

(B) If utility costs have decreased (e.g., 2003's utility costs = \$20,000 and 2007's utility costs = \$15,000), then the landlord does not adjust the 1986 "base year" utility costs (\$15,000), but must deduct the decrease (\$5,000 [\$20,000 minus \$15,000]) from the 2009 passthrough as follows: \$35,000 (2009 utility costs) minus \$15,000 (1986 utility costs) = \$20,000 minus \$5,000 (decrease between 2003 and 2007) = \$15,000 new utility passthrough.

(d) Determination of "Comparison Year"

For purposes of this section, the "comparison year" in all cases shall be the calendar year immediately preceding the filing of the landlord's petition for approval of the utility passthrough.

(e) The landlord must file a petition before giving legal notice of a rent increase for a utility passthrough. The petition must be filed no more than twelve months after the "comparison year" listed in the petition. The notice of rent increase shall be in conformance with the requirements set forth in Section 4.10 above and shall further include the dollar amount requested for the utility passthrough. This increase

1 for the utility passthrough shall be inoperative unless and until the petition is approved
2 by the Administrative Law Judge. Any amounts approved by the Administrative Law
3 Judge shall relate back to the effective date of the legal notice, if given. A landlord
4 may choose instead not to serve legal notice of a proposed utility passthrough until
5 after the decision of the Administrative Law Judge is rendered. In any event, no rent
6 increase approved by the Administrative Law for a utility passthrough shall become
7 effective until the tenant's anniversary date.

8 (f) No landlord may pass through any increase in the cost of utilities to a
9 tenant until the tenant has occupied the unit in the subject property for one
10 continuous year.

11 (g) Where the utility bills include the cost of gas and/or electricity for laundry
12 facilities and the landlord charges a user fee for the laundry facilities, the landlord may
13 not pass through any increase in the building's cost of utilities unless the landlord
14 complies with one of the following subsections:

15 (i) where the laundry facilities are separately metered in both the "base
16 year" and "comparison year", the landlord shall not include the utility costs for the
17 laundry facilities in the utility passthrough calculation; or

18 (ii) where the laundry facilities are not separately metered in both the
19 "base year" and the "comparison year" and there is a third party vendor that collects
20 the user fees from the laundry facilities, the landlord shall deduct the income actually
21 received by the landlord from the third party vendor from the total utility costs for the
22 building; or

23 (iii) where the laundry facilities are not separately metered in both the
24 "base year" and the "comparison year" and there is not a third party vendor that
25 collects the user fees from the laundry facilities, the landlord shall deduct 50% of the
26 user fees actually collected by the landlord from the total utility costs for the building.

27 (h) Where the utility bills include the cost of gas and/or electricity for laundry
28

1 facilities and the laundry facilities are not available to or operated for the benefit of the
2 tenant, and the laundry facilities are not separately metered in both the "base year"
3 and "comparison year", the landlord may not pass through to that tenant any increase
4 in the building's cost of utilities.

5 (i) The landlord shall calculate the amount of the utility passthrough as
6 follows:

7 (i) Compile the utility bills for the "base year" and the "comparison
8 year" as defined in subsections (b), (c) and (d) above. The utility passthrough shall be
9 based on actual costs incurred by the landlord during the relevant calendar years,
10 regardless of when the utility bill was received or paid.

11 (ii) Calculate the total utility cost for the "base year" and the total
12 utility cost for the "comparison year".

13 (iii) Where applicable, compile evidence of any and all laundry facilities
14 income actually received or collected by the landlord for the use of the laundry
15 facilities in the "base year" and the "comparison year". Calculate the total laundry
16 facilities income for the "base year" and the total laundry facilities income for the
17 "comparison year".

18 (iv) Where applicable, subtract the laundry facilities income from the
19 total utility cost for the "base year" and the total utility cost for the "comparison
20 year".

21 (v) Subtract the total "base year" utility cost (excluding laundry
22 facilities income) from the total "comparison year" utility cost (excluding laundry
23 facilities income) to get the utility cost increase. If there is no increase or if there has
24 been a decrease, no passthrough is allowed.

25 (vi) Divide the resulting figure, if greater than zero, by twelve (12) to
26 determine the average monthly utility increase for the entire property.

27 (vii) Divide the average monthly utility increase by the number of rooms

1 in the property to get the amount of the utility passthrough that may be imposed for
2 each room. For purposes of this section, the number of rooms in a property shall be
3 calculated by presuming that single rooms without kitchens are one room units, studios
4 are two room units, one bedroom units without a separate dining room are three room
5 units, and so on. Each parking space and garage space in the building which is included in
6 a tenant's rental or for which a user fee is charged shall be counted as one room. Areas
7 used for commercial purposes but for which no user fee is charged to the tenants,
8 including but not limited to management offices and retail space, shall be included in the
9 room count in a manner that most reasonably takes into account the size of the space
10 and its utility usage.

11 (vii) To get the monthly utility passthrough for a unit, add the number of
12 rooms in the unit to the number of rooms for parking and/or garage spaces included in
13 the tenant's rental or for which a user fee is paid by the tenant, and multiply that total
14 number of rooms by the monthly utility increase per room.

15 (i) Each utility passthrough shall apply only for the twelve-month period after
16 it is imposed.

17 (k) Nothing in this section or in these Rules and Regulations shall be
18 interpreted as requiring any landlord to pass through any utility increase or to increase
19 any tenant's rent.

20 (l) The amount of rent due from the tenant for any utility passthrough shall
21 be due on the same date as a rent payment normally would be due.

22 (m) A utility passthrough may be imposed only at the time of an annual rent
23 increase. However, no amount passed through to the tenant as a utility increase shall
24 be included in the tenant's base rent for purposes of calculation of the amount of rent
25 increases allowable under the Ordinance and these Rules and Regulations.

26 (n) The provisions of this Section shall be deemed a part of every rental
27 agreement or lease, written or oral, for the possession of a rental unit subject to the

1 Ordinance unless the landlord and the tenant agree that the landlord will not pass
2 through any utility increases, in which case such agreement will be binding on the
3 landlord and on any successor owner of the property.

4 (o) Where a utility increase has been lawfully passed through to the tenant, a
5 change in the ownership of the property in which the tenant's unit is located will not
6 affect the tenant's liability to pay the amount passed through.

7
8 *–Amend Section 10.12 by adding the following language to the beginning of Section 10.12:*

9 **Section 10.12 Documentation of Gas and Electrical Increases**

10 The following provisions shall apply to utility passthroughs where the notice of
11 rent increase for the utility passthrough was served prior to or on [the effective date
12 of Section 6.16]:

13 (a) A tenant may petition for an arbitration hearing if the landlord has failed
14 to provide the tenant with a clear explanation of the charges for gas and electricity on
15 which an increase is being based.

16 (b) The landlord shall have the burden of proving the calculations upon which
17 this increase is based.

18 (c) A petition based on this section shall be accompanied by the notice of
19 increase.

20
21 *– Add the following new Section 10.13:*

22 **Section 10.13 Improper Utility Passthrough**

23 The following provisions shall apply to utility passthroughs where the notice of
24 rent increase for the utility passthrough was served after [the effective date of Section
25 6.16]:

26 (a) A tenant may petition for an arbitration hearing if the landlord has
27 increased the tenant's rent based on an increase in utility costs, but (1) has failed to

1 file a petition for approval of the utility passthrough pursuant to Section 6.16 of these
2 Rules, or (2) has failed to discontinue the utility passthrough after twelve months.

3 (b) The landlord shall have the burden of proving that the utility passthrough
4 has been approved and/or imposed in accordance with Section 6.16 of these Rules.

5 (c) A petition based on this section shall be accompanied by the notice of
6 increase.



SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

LARRY BEACH BECKER
DAVID GRUBER
DEBORAH HENDERSON
JIM HURLEY
ANTHONY JUSTMAN
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

August 3, 2004

GAVIN NEWSOM
MAYOR

DELENE WOLF
ACTING EXECUTIVE DIRECTOR

NOTICE OF PUBLIC HEARING

DATE: August 24, 2004

TIME: 7:00 P.M.

**PLACE: 25 VAN NESS AVENUE (AT MARKET ST.)
SUITE 70, LOWER LEVEL
SAN FRANCISCO, CALIFORNIA**

THE RENT BOARD COMMISSIONERS INVITE THE PUBLIC TO COMMENT ON PROPOSED CHANGES TO THE RULES AND REGULATIONS GOVERNING THE RESIDENTIAL RENT STABILIZATION AND ARBITRATION ORDINANCE, CHAPTER 37 OF THE SAN FRANCISCO ADMINISTRATIVE CODE.

THE COMMISSION IS TAKING PUBLIC COMMENT ON A PROPOSED AMENDMENT TO RULES AND REGULATIONS SECTION 2.15. THE INTENT OF THE AMENDMENT IS TO CONFORM THE REGULATION, GOVERNING PER DIEM COMPENSATION TO RENT BOARD COMMISSIONERS, TO ORDINANCE SECTION 37.4(h).

You may either comment at the Public Hearing and/or submit written comments. If you would like to submit written comments, it is requested that they be received at the Department no later than **5 p.m. on Tuesday, August 17, 2004**, so that the Commissioners can be mailed your comments and review them prior to the hearing. Written comments may also be submitted at the hearing. Please submit 12 copies of your comments in order to facilitate their distribution. You will be able to address the Commissioners during the public comment period at the hearing. **DOCUMENTS DEPT.**

AUG - 5 2004

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PAGE 2
NOTICE OF PUBLIC HEARING, SECTION 2.15

Section 2.15 Per Diem Compensation

Each member shall receive ~~\$100.00~~ \$75.00 for each Board meeting attended if the meeting lasts for ~~three~~ six hours or more in a single twenty-four hour period, \$75.00 if the meeting lasts from one to three hours in a single twenty-four hour period, and \$50.00 \$70.00 if the meeting lasts ~~one hour or less~~ than six hours in a single twenty-four hour period. If a member or the alternate is not in attendance for an entire meeting, compensation shall be determined by reference to the actual aggregate time the member was in attendance in proportion to the total time of the meeting.



SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

LARRY BEACH BECKER
DAVID GRUBER
DEBORAH HENDERSON
JIM HURLEY
ANTHONY JUSTMAN
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, August 24, 2004 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

GAVIN NEWSOM
MAYOR

DELENE WOLF
ACTING EXECUTIVE DIRECTOR

DOCUMENTS DEPT.

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I. Call to Order

President Wasserman called the meeting to order at 6:05 p.m.

II. Roll Call

Commissioners Present: Becker; Henderson; Hurley; Justman;
Marshall; Mosbrucker; Mosser;
Wasserman.

Commissioners not Present: Gruber.

Staff Present: Gartzman; Wolf.

Commissioner Murphy appeared on the record at 6:15 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of August 3, 2004.
(Becker/Hurley: 5-0)

IV. Remarks from the Public

A. Carolyn Cahn, President of the Parkmerced Residents' Organization (PRO), informed the Commissioners that Genevieve Callejo, the tenant appellee in the case concerning 552 Arballo (AL040084), had fractured her hip and is in the hospital. Ms. Callejo also has double pneumonia. Ms. Cahn stressed that Parkmerced has known about and refused to address errors in their PG&E passthrough calculations, which has forced the issuance of a Decision by the Rent Board.

B. Robert Pender, Vice-President of PRO, distributed a copy of PRO's most recent newsletter and announced the date and time of the organization's next meeting.

C. Ernestine Weiss spoke regarding problems she perceives at the Golden Gateway complex. Ms. Weiss filed a petition alleging a substantial decrease in housing services due to rust in her shower, which was denied. Ms. Weiss said that she is "frustrated and disgusted," and won't even bother to appeal. Ms. Weiss also alleged that the Board is "unfair" and "corrupt," and admonished the Commissioners to "be aware of what's going on in the City."

D. Joseph Bravo, Attorney for Parkmerced (Olympic View Realty), brought to the Board's attention a letter he filed after the briefing deadline in the case. He asked that the Commissioners consider his request for Technical Correction and additional argument.

E. Kenneth Perez, the tenant in the case at 201 Leavenworth (AT040094), told the Board that there has been illegal activity in his building, including mail fraud. A letter that he had written concerning these topics was returned to him.

V. Consideration of Appeals

A. 1261 Goettingen St.

AT040096

The tenant's petition alleging decreased housing services was dismissed due to the tenant's failure to appear at the properly noticed hearing. On appeal, the tenant alleges non-receipt of the Notice of Hearing, and attaches the requisite Declaration of Non-Receipt.

MSC: To accept the appeal and remand the case for a new hearing.
(Becker/Marshall: 5-0)

B. 530-1/2 Noe St.

AL040092

The tenant's petition alleging unlawful rent increases was granted and the landlords were found liable to the tenant in the amount of \$6,088.70. On appeal, the landlords claim that: since the tenant moved out of the unit prior to issuance of the Decision of Administrative Law Judge (ALJ), the Decision should be moot; the ALJ engaged in ex parte communication with the tenant after the hearing; the refund goes back longer than the 3-year Statute of Limitations; allowable rent increases are not offset from sums owing from the landlords to the tenant; the tenant perjured herself during the hearing; and the rental agreement between the parties provides that any disputes are to first be taken before the Community Boards mediation program.

MSC: To deny the appeal. (Becker/Marshall: 5-0)

C. 1408 California #201

AT040093

The tenant's petition alleging decreased housing services due to alleged noise emanating from another unit in the building was denied. The tenant appeals, claiming that: the Administrative Law Judge erred in finding that she failed to meet her burden of proof; ceiling tiles are not sound barriers; other tenants in the building are not affected by the noise in the unit below, which can only be experienced in the tenant's unit; she does not wish to move from her unit, and it is the offending neighbor who should have to do so; and the situation is having a deleterious effect on the tenant's health.

MSC: To deny the appeal. (Mosser/Murphy: 5-0)

D. 201 Leavenworth #411

AT040094

The tenant's petition alleging various decreases in housing services was denied. On appeal, the tenant claims that the Decision constitutes a gross misinterpretation of the facts concerning Federal mail fraud, as well as a series of crimes committed against the tenant in the building.

MSC: To recuse Commissioner Mosser from consideration of this appeal.
(Mosser/Justman: 5-0)

MSC: To deny the appeal. (Hurley/Murphy: 5-0)

E. 552 Arballo Dr.

AL040084
(cont. from 8/3/04)

The tenants' petition alleging that the landlord incorrectly calculated the PG&E passthrough was granted and the landlord was found liable to the tenants in the amount of \$302.77. Additionally, the current passthrough in the amount of \$23.17 was reduced to \$0.18. On appeal, the landlord asserts that: the landlord should not be required to provide PG&E bills and evidence establishing laundry room utility usage for base year 1979-1980 because the tenants did not previously challenge the claimed 1979-1980 base year utility costs and the landlord did not own the property at that time; the landlord's utility cost spreadsheet which includes data "inherited" from prior owners is reliable evidence to establish utility costs between 1979-1999; the landlord did not discontinue the tenants' utility passthrough in 1987 when no passthrough was imposed, but rather preserved its 1979-1980 base year; the landlord's decision to continue the prior passthrough amount as a "place holder" instead of recalculating a new amount for the tenants' 2000-2001 passthrough should not result in the establishment of a new base year under Rules and Regulations Section 4.11(c); and, there is adequate evidence to establish base year and comparison year utility costs for each of the relevant passthrough periods.

MSC: To recuse Commissioner Becker from consideration of this appeal.
(Becker/Justman: 5-0)

MSC: To deny the appeal except to remand the case to the Administrative Law Judge for a necessary Technical Correction. (Marshall/Henderson: 3-2; Mosser, Murphy dissenting)

VI. Public Hearings

A. Proposed Amendments to Rules and Regulations Sections 1.19, 4.11 and 10.12 and Proposed New Rules Sections 6.16 and 10.13 Regarding Utility Passthroughs

A Public Hearing regarding proposed amendments to the Rules pertaining to calculation of utility passthroughs was convened at 7:05 p.m. President Wasserman explained to those assembled that Supervisor Peskin had held hearings on issues regarding PG&E passthroughs before the Housing and Land Use Committee of the Board of Supervisors. As a result of those hearings, Supervisor Peskin asked the Rent Board to make some revisions to the existing procedures, so that the Board of Supervisors did not have to take up the issue. A Public Hearing was held on two proposals, one with indexing for inflation and one without. Subsequently, Commissioner Justman worked with staff on drafting a compromise proposal, which was the subject of the instant Public Hearing. Twelve individuals testified as follows below:

1. Tenant Ernestine Weiss said that she appreciated all the hard work the Commissioners put in, but that it wasn't necessary: it would be simpler to just include utility costs in the base rent that the tenant pays. Ms. Weiss said that she believes her landlord, the Golden Gateway complex, received rebates from PG&E that they won't reveal. She wondered: "Where is the Sunshine Ordinance?"

2. Tenant Laura Traveler suggested that where the proposed regulations say "landlord," it should specify "landlord of record." She said that Olympic View Realty is using a spreadsheet from the prior owner, since they do not have the supporting documents. Despite her one suggestion, Ms. Traveler declared herself "very pleased" with the proposed amendments.

3. Tenant Carolyn Cahn also thanked the Commissioners for their hard work. She told the Board that it is difficult for tenants to prove their contentions, since they are not allowed to subpoena the owner's records; it is easier for large landlords to hide information; and it takes tenants some time to realize there are problems.

4. Tenant Beatrice Wahlbeck posed several questions, including: the status of improper pre-2002 passthroughs; whether tenants will be able to petition for an alternate

base year; and whether changes in garage rentals will result in changes to how the passthrough is calculated.

5. Tenant Robert Pender seconded the comments of Laura Traveler and Carolyn Cahn. Mr. Pender registered his displeasure with the way the regulations are written, and requested that they be drafted in "plain English" or he will not support them.

6. Landlord Attorney Barbara Herzig spoke on behalf of the landlords at the Golden Gateway complex and Parkmerced. Ms. Herzig voiced a concern that there is a transitional period between the old and new regulations during which time a landlord will lose the passthrough; she also believes that there is a due process problem with having to prove an alternate base year that is very old. Ms. Herzig postulated that, at some point, a landlord's right to a certain rental amount vests, and cited the Palacio case as authority. Ms. Herzig finally stated that the regulations' treatment of laundry room income constitutes an expropriation of an individual source of income.

7. Landlord Attorney Nancy Lenvin spoke on behalf of the landlords at the Golden Gateway complex, and said that her client cannot support the regulations as written. Ms. Lenvin maintained that: the proposed amendments are in conflict with the Ordinance; there is no need for revision of the existing system; the Golden Gateway landlord wishes to keep their existing base year and will not be able to do so, which renders the system confiscatory; the annual rent increase was intended to recover other costs; and the entire regulatory scheme is getting shaky. Ms. Lenvin cited the Kavanaugh and Galland cases.

8. Mitchell Omerberg spoke on behalf of the Affordable Housing Alliance, which he said was generally supportive of the proposed compromise amendments. Mr. Omerberg said that having a landlord petition requirement will "clean up mistakes"; landlords should have to prove their base year; there is a "double collection issue" because operating expenses include utilities; and indexing would address the inflationary effects of money. Mr. Omerberg finished with an exhortation to the Board to "move forward, with this amount of work."

9. Janan New submitted written comments in opposition to the amendments on behalf of the S.F. Apartment Association, especially ruing the complexity of the proposal.

10. Property manager Richard Lee suggested that where laundry facilities are not separately metered and there is not a third party vendor or user fee, the landlord should be able to pass through any increase in the cost of the building's utilities. He was informed that his concern was addressed in the proposed amendments.

11. Landlords' representative Andy Braden told the Board they spent lots of time, but weren't trying to make it simple. He suggested that the Commissioners just apply the 60% of CPI figure to the base year costs, which reflects inflation. He also pointed out that increases are almost always for heat, and not electrical. Since garages aren't

heated, tenants using the garage will pay a disproportional share – especially since the cost of lights in a garage are “miniscule.”

12. Joseph Bravo, Attorney for Parkmerced, said that laundry costs could be calculated pursuant to “a simple formula.” Mr. Bravo was concerned about the “standard of proof.” Now, the fact that the landlord will have to prove their base year costs will result in keeping records for many years. However, the Statute of Limitations provides that a tenant must challenge a passthrough within one year; the landlord does not have subpoena power to get the records from the prior owner; and PG&E won’t provide records from a period of prior ownership.

After the conclusion of the Public Hearing at 8:00 p.m., the Commissioners discussed the proposal. Commissioner Becker pointed out that many tenants move in under an agreement where the landlord pays for utilities, and these charges are on top of that. Commissioner Murphy said that he could not support a Rule that makes people prove up something that they’ve relied upon for years, although he would support having to prove base year costs on a going-forward basis. Commissioner Henderson suggested that landlords might have to go to court to subpoena records. President Wasserman pointed out that there are several methods of proving costs besides the actual bills. Commissioner Marshall was concerned that landlords who testified wished to be able to prove the actual costs of utilities that serve the laundry facilities, and thought they should have that option. She suggested that the following additional language be added as Section 6.16(g)(iv): “where the laundry facilities are not separately metered in both the ‘base year’ and ‘comparison year’, the landlord deducts the actual costs of utilities that serve such laundry facilities, if proved by the landlord.”

MSC: To adopt the proposed amendments to Rules and Regulations Sections 1.19, 4.11 and 10.12 and proposed new Rules and Regulations Sections 6.16 and 10.13 regarding utility passthroughs, including new subsection 6.16(g)(iv), effective November 1, 2004.
(Becker/Marshall: 3-2; Mosser, Murphy dissenting)

The amendments read as follows below:

Section 1.19 Tenant’s Utilities

For the purpose of Ordinance Section 37.2 (q) and Sections 4.11 and 6.16 of these Rules, “Tenant’s Utilities” means charges for natural gas or electricity provided by Pacific Gas and Electric Company directly to the unit occupied by the tenant or to the building in which the unit is located and benefiting the tenant, whether paid by the tenant alone, by the landlord alone, or part by the tenant and part by the landlord.

Section 4.11 Computation of Passthrough of Gas and Electricity

The following provisions shall apply to utility passthroughs where the notice of rent increase for the utility passthrough was served prior to or on [the effective date of Section 6.16], except that with respect to such utility passthroughs, the passthrough shall be discontinued twelve months after it was imposed or by [60 days after the effective date of

Section 6.16], whichever is later.

(a) No landlord may pass through any increase in the cost of the utilities to a tenant until the tenant has occupied one or more units in the subject building for one continuous year. Each utility passthrough may be charged to the tenant only at the time of an annual rent increase.

(b) Where a landlord pays for gas, electricity, and/or steam and seeks to recover the increase in the cost of these utilities from tenants, the landlord shall calculate the amount of such increase by using either of the following two methods, both of which should always yield the same results:

(1) Method 1: Compile the utilities receipts for the two calendar years preceding the first noticing of the utility passthrough. The calendar year immediately preceding the noticing shall be referred to as the "comparison year;" the calendar year preceding the "comparison year" shall be referred to as the "base year." The base year will remain the same for all future calculations, except where the pass through is discontinued pursuant to subsection (c) below. Different tenants in the same building may have different base years depending on when they moved into the building and when utility increases were first passed through to them.

(i) Calculate the total utility cost for the comparison year and the total utility cost for the base year.

(ii) Subtract the total base year utility cost from the total comparison year utility cost. If there is no increase or if there has been a decrease, no pass through for the current calendar year is allowed and any increase levied in a prior year must be discontinued.

(iii) Divide the resulting figure, if greater than zero, by 12 to determine the average monthly utility increase or decrease for the entire building.

(iv) Divide the average monthly utility increase or decrease by the number of rooms in the building. For the purposes of this section the number of rooms in a building shall be calculated by presuming that single rooms without kitchens are one room units, studios are two room units, one bedroom units without a separate dining room are three room units, and so on.

(v) If a utility pass through has been instituted, subsequent passthroughs shall be determined for the immediately following year by calculating the utility cost for the calendar year preceding the noticing of the passthrough. This amount shall become the updated comparison year figure. The passthrough shall then be calculated in accordance with Rules and Regulations Sections 4.11(b)(1)(ii) through 4.11(b)(1)(iv).

(2) Method 2: Alternatively, the landlord may choose, in subsequent years, to use the prior year's "comparison year" as the current base year and subtract the updated base year amount from the new comparison year total utility cost. The resulting amount would be added to the prior year's total utility passthrough. The passthrough shall then be calculated in accordance with Rules and Regulations Sections 4.11(b)(1)(iii) through 4.11(b)(1)(v).

(c) Until such time as an annual rent increase is noticed the current pass through shall remain in effect. However, if a landlord does not recalculate and re-notice the pass through at the subsequent annual rent increase, the entire pass through is discontinued until recalculated and re-noticed. At such time as a new pass through is calculated and noticed, a new base year is established which shall be the calendar year preceding the new comparison year.

(d) In the event that more than one year has passed since the imposition of the last PG&E pass through, the landlord must adjust for any increases or decreases that have occurred since the last pass through was implemented, so that the tenant receives the

benefit of any utility decrease that occurred in the intervening period.

(e) Nothing in this section or in these Rules and Regulations shall be interpreted as requiring any landlord to pass through any utility increase or to raise any tenant's rent. However, where the utility costs decrease in years subsequent to the passing through of an increase, the tenant must be given the benefit of such decrease calculated in the same manner as any increase passed through under Ordinance Section 37.2(n). A tenant may petition the Board for an arbitration hearing whenever a pass through charge has been noticed or is in effect and the tenant protests the amount being charged or the calculation procedure being used by the landlord. If the comparison year utility costs fall below the base year costs, the landlord shall not be required to reduce the rent beyond eliminating any utility pass through made in prior years.

(f) If the methods set forth for an increase (or decrease) in utilities in subsection (b) of this Section cannot be applied for reasons beyond the control of the landlord, and in the absence of a relevant agreement between the landlord and the tenant, the landlord may petition the Board for an arbitration hearing to establish an appropriate alternative method, which shall be used for all following years unless another method is approved by the Board.

(g) The amount of rent due from the tenant for any utility pass through shall be due on the same date as a rent payment normally would be due.

(h) No amount passed through to the tenant as a utility increase shall be included in the tenant's base rent for purposes of calculation of the amount of rent increases allowable under the Ordinance and these Rules and Regulations.

(i) The provisions of this Section shall be deemed a part of every rental agreement or lease, written or oral, for the possession of a rental unit subject to the Ordinance unless the landlord and the tenant agree that the landlord will not pass through any utility increases, in which case such agreement will be binding on the landlord and on any successor owner of the building, unless such agreement is changed in accordance with applicable law.

(j) Where a utility increase has been lawfully passed through to the tenant, a change in the ownership of the building in which the tenant's unit is located will not affect the tenant's liability to pay the amount passed through or the tenant's entitlement to the benefit of decreases in the utilities costs.

Section 6.16 Utility Passthrough

The following provisions shall apply to utility passthroughs where the notice of rent increase for the utility passthrough was served after [the effective date of Section 6.16]:

(a) Where a landlord pays for gas, electricity and/or steam provided directly to the unit occupied by the tenant and/or to the common areas of the property in which the unit is located, and seeks to recover the increase in the cost of these utilities from the tenant, the landlord must file a petition for approval of the utility passthrough on a form prescribed by the Board. The petition shall specify the units on the property that are subject to the petition. The petition will be decided without a hearing unless the Administrative Law Judge determines that a hearing is required.

(b) Determination of Initial "Base Year"

(i) For all tenancies existing on December 31, 2003, the initial "base year" for purposes of this section shall be calendar year 2002.

(ii) However, where a utility passthrough is in effect for a tenancy on [the effective date of this amendment], the landlord may elect to use calendar year 2002 as the initial "base year" or elect to continue to use the earlier "base year" for all future utility passthrough calculations, provided that the landlord petitions the Board for

approval of the earlier "base year" and the Board determines that the earlier "base year" is proper under Section 4.11 of these Rules.

(iii) For all new tenancies commencing after December 31, 2003, the initial "base year" shall be the calendar year immediately preceding the year of the inception of the tenancy.

(iv) A landlord may petition the Board for approval of an alternate "base year" if the landlord became an owner of record after December 31, 2002 and demonstrates a good faith, but unsuccessful, effort to obtain the utility bills from the former landlord and/or the utility company that are necessary to establish the "base-year" utility costs required by subsections (b)(i), (b)(ii) or (b)(iii). The Board will not approve an alternate "base year" that creates exaggerated results unless the proposed alternate "base year" coincides with the landlord's first full calendar year of ownership.

(c) Subsequent Adjustments to Initial "Base Year"

Different tenants in the same property may have different initial "base years" depending on when they moved into the property or whether the Board has approved use of an earlier "base year" pursuant to subsection (b)(ii) above or use of an alternate "base year" pursuant to subsection (b)(iv) above. The initial "base year" utility costs shall be adjusted every five years as follows:

(i) Where the initial "base year" is 2002 or later, a new "base year" is established at the end of every fifth calendar year after the initial "base year". For example, where the initial "base year" is 2002, the new "base year" shall be 2007 for petitions filed between January 1, 2009 and December 31, 2013. If the tenancy continues for an additional five years, the "base year" will become 2012 for petitions filed between January 1, 2014 and December 31, 2018, and so on. For another example, where the initial "base year" is 2004, the new "base year" shall be 2009 for petitions filed between January 1, 2011 and December 31, 2015. If the tenancy continues for an additional five years, the "base year" will become 2014 for petitions filed between January 1, 2016 and December 31, 2020.

(ii) Where the initial "base year" is prior to 2002 and has been approved by the Board pursuant to subsection (b)(ii) above, the landlord may elect to keep said "base year" for purposes of future utility passthrough calculations without regard to subsection (c)(i) above. However, in such a case, the landlord must adjust the "base year" utility costs every five years beginning with utility passthrough petitions filed in 2009. The first "base year" adjustment shall equal the difference, if more than zero, between 2003 utility costs and 2007 utility costs, and it shall be added to the "base year" utility cost used by the landlord. This "base year" adjustment shall be in effect for petitions filed between January 1, 2009 and December 31, 2013. Every fifth year thereafter (i.e. 2014, 2019, etc.), the landlord's petition shall include another "base year" adjustment equal to the difference in utility costs, if more than zero, for each subsequent five-year period (e.g., 2008 and 2012, 2013 and 2017, etc.). If utility costs decrease during any five-year adjustment period, then no adjustment shall be required to the "base year" utility costs, but the landlord must deduct the amount of the decrease from the difference between the initial "base year" utility costs and the new "comparison year" utility costs. For example:

(A) Suppose a tenant's approved "base year" is 1986, and the 1986 utility costs are \$15,000. In 2009, the landlord must calculate the difference between the 2003 utility costs (\$20,000) and the 2007 utility costs (\$30,000). Since utility costs increased between 2003 and 2007, the landlord must add the increase (\$10,000 [\$30,000 minus \$20,000]) to the initial "base year" utility costs (\$15,000) and then compare the adjusted "base year" utility costs (\$25,000 [\$10,000 + \$15,000]) to the 2009 "comparison year" utility costs (\$35,000) in order to calculate the new utility passthrough (\$10,000 [\$35,000 minus \$25,000]).

(B) If utility costs have decreased (e.g., 2003's utility costs = \$20,000 and 2007's utility costs = \$15,000), then the landlord does not adjust the 1986 "base year" utility costs (\$15,000), but must deduct the decrease (\$5,000 [\$20,000 minus \$15,000]) from the 2009 passthrough as follows: \$35,000 (2009 utility costs) minus \$15,000 (1986 utility costs) = \$20,000 minus \$5,000 (decrease between 2003 and 2007) = \$15,000 new utility passthrough.

(d) Determination of "Comparison Year"

For purposes of this section, the "comparison year" in all cases shall be the calendar year immediately preceding the filing of the landlord's petition for approval of the utility passthrough.

(e) The landlord must file a petition before giving legal notice of a rent increase for a utility passthrough. The petition must be filed no more than twelve months after the "comparison year" listed in the petition. The notice of rent increase shall be in conformance with the requirements set forth in Section 4.10 above and shall further include the dollar amount requested for the utility passthrough. This increase for the utility passthrough shall be inoperative unless and until the petition is approved by the Administrative Law Judge. Any amounts approved by the Administrative Law Judge shall relate back to the effective date of the legal notice, if given. A landlord may choose instead not to serve legal notice of a proposed utility passthrough until after the decision of the Administrative Law Judge is rendered. In any event, no rent increase approved by the Administrative Law for a utility passthrough shall become effective until the tenant's anniversary date.

(f) No landlord may pass through any increase in the cost of utilities to a tenant until the tenant has occupied the unit in the subject property for one continuous year.

(g) Where the utility bills include the cost of gas and/or electricity for laundry facilities and the landlord charges a user fee for the laundry facilities, the landlord may not pass through any increase in the building's cost of utilities unless the landlord complies with one of the following subsections:

(i) where the laundry facilities are separately metered in both the "base year" and "comparison year", the landlord shall not include the utility costs for the laundry facilities in the utility passthrough calculation; or

(ii) where the laundry facilities are not separately metered in both the "base year" and the "comparison year" and there is a third party vendor that collects the user fees from the laundry facilities, the landlord shall deduct the income actually received by the landlord from the third party vendor from the total utility costs for the building; or

(iii) where the laundry facilities are not separately metered in both the "base year" and the "comparison year" and there is not a third party vendor that collects the user fees from the laundry facilities, the landlord shall deduct 50% of the user fees actually collected by the landlord from the total utility costs for the building; or

(iv) where the laundry facilities are not separately metered in both the "base year" and "comparison year", the landlord deducts the actual costs of utilities that serve such laundry facilities, if proved by the landlord.

(h) Where the utility bills include the cost of gas and/or electricity for laundry facilities and the laundry facilities are not available to or operated for the benefit of the tenant, and the laundry facilities are not separately metered in both the "base year" and "comparison year", the landlord may not pass through to that tenant any increase in the building's cost of utilities.

(i) The landlord shall calculate the amount of the utility passthrough as follows:

(i) Compile the utility bills for the "base year" and the "comparison

year” as defined in subsections (b), (c) and (d) above. The utility passthrough shall be based on actual costs incurred by the landlord during the relevant calendar years, regardless of when the utility bill was received or paid.

(ii) Calculate the total utility cost for the “base year” and the total utility cost for the “comparison year”.

(iii) Where applicable, compile evidence of any and all laundry facilities income actually received or collected by the landlord for the use of the laundry facilities in the “base year” and the “comparison year”. Calculate the total laundry facilities income for the “base year” and the total laundry facilities income for the “comparison year”.

(iv) Where applicable, subtract the laundry facilities income from the total utility cost for the “base year” and the total utility cost for the “comparison year”.

(v) Subtract the total “base year” utility cost (excluding laundry facilities income) from the total “comparison year” utility cost (excluding laundry facilities income) to get the utility cost increase. If there is no increase or if there has been a decrease, no passthrough is allowed.

(vi) Divide the resulting figure, if greater than zero, by twelve (12) to determine the average monthly utility increase for the entire property.

(vii) Divide the average monthly utility increase by the number of rooms in the property to get the amount of the utility passthrough that may be imposed for each room. For purposes of this section, the number of rooms in a property shall be calculated by presuming that single rooms without kitchens are one room units, studios are two room units, one bedroom units without a separate dining room are three room units, and so on. Each parking space and garage space in the building, which is included in a tenant’s rental or for which a user fee is charged, shall be counted as one room. Areas used for commercial purposes but for which no user fee is charged to the tenants, including but not limited to management offices and retail space, shall be included in the room count in a manner that most reasonably takes into account the size of the space and its utility usage.

(viii) To get the monthly utility passthrough for a unit, add the number of rooms in the unit to the number of rooms for parking and/or garage spaces included in the tenant’s rental or for which a user fee is paid by the tenant, and multiply that total number of rooms by the monthly utility increase per room.

(j) Each utility passthrough shall apply only for the twelve-month period after it is imposed.

(k) Nothing in this section or in these Rules and Regulations shall be interpreted as requiring any landlord to pass through any utility increase or to increase any tenant’s rent.

(l) The amount of rent due from the tenant for any utility passthrough shall be due on the same date as a rent payment normally would be due.

(m) A utility passthrough may be imposed only at the time of an annual rent increase. However, no amount passed through to the tenant as a utility increase shall be included in the tenant’s base rent for purposes of calculation of the amount of rent increases allowable under the Ordinance and these Rules and Regulations.

(n) The provisions of this Section shall be deemed a part of every rental agreement or lease, written or oral, for the possession of a rental unit subject to the Ordinance unless the landlord and the tenant agree that the landlord will not pass through any utility increases, in which case such agreement will be binding on the landlord and on any successor owner of the property.

(o) Where a utility increase has been lawfully passed through to the tenant, a change in the ownership of the property in which the tenant’s unit is located will not affect the tenant’s liability to pay the amount passed through.

Section 10.12 Documentation of Gas and Electrical Increases

The following provisions shall apply to utility passthroughs where the notice of rent increase for the utility passthrough was served prior to or on [the effective date of Section 6.16]:

- (a) A tenant may petition for an arbitration hearing if the landlord has failed to provide the tenant with a clear explanation of the charges for gas and electricity on which an increase is being based.
- (b) The landlord shall have the burden of proving the calculations upon which this increase is based.
- (c) A petition based on this section shall be accompanied by the notice of increase.

Section 10.13 Improper Utility Passthrough

The following provisions shall apply to utility passthroughs where the notice of rent increase for the utility passthrough was served after [the effective date of Section 6.16]:

- (a) A tenant may petition for an arbitration hearing if the landlord has increased the tenant's rent based on an increase in utility costs, but (1) has failed to file a petition for approval of the utility passthrough pursuant to Section 6.16 of these Rules, or (2) has failed to discontinue the utility passthrough after twelve months.
- (b) The landlord shall have the burden of proving that the utility passthrough has been approved and/or imposed in accordance with Section 6.16 of these Rules.
- (c) A petition based on this section shall be accompanied by the notice of increase.

B. Proposed Amendments to Rules and Regulations Section 2.15 Regarding Commissioner Compensation

No one appeared to speak at the scheduled Public Hearing regarding this issue. In order to conform Rules Section 2.15 regarding per diem compensation to Rent Board Commissioners with Ordinance Section 37.4(h), the following language was proposed:

Section 2.15 Per Diem Compensation

Each member shall receive \$75.00 for each Board meeting attended if the meeting lasts for six hours or more in a single twenty-four hour period, and \$70.00 if the meeting lasts less than six hours in a single twenty-four hour period. If a member or the alternate is not in attendance for an entire meeting, compensation shall be determined by reference to the actual aggregate time the member was in attendance in proportion to the total time of the meeting.

MSC: To adopt the proposed amendments to Rules and Regulations Section 2.15 regarding Commissioner compensation. (Justman/Mosser: 5-0)

VII. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received a letter from Attorney Daryl Nelson regarding a Variance Application at 1460 Montgomery Street, with possible adverse rent control repercussions to her client, the

tenant at the property. The Commissioners asked that a letter be sent to the Planning Department, letting them know of the Rent Board's availability to answer any questions regarding the Rent Ordinance or the impact of any Planning decisions under the Rent Ordinance.

VIII. Director's Report

Acting Executive Director Wolf informed the Board that Kathy Chau, a 1424 Clerk-Typist, has been "bumped" by another City employee due to layoffs in her classification. Unless the situation changes due to employees' acceptance of "3 + 3" retirement offers, Ms. Chau's last day in the office will be August 31st. Ms. Chau is an excellent employee, and the Department is doing everything within its power to retain her.

IX. Calendar Items

August 31, 2004 - NO MEETING

September 7, 2004

6 appeal considerations

New Business: Residential Hotel Visitor Policy

X. Adjournment

President Wasserman adjourned the meeting at 8:57 p.m.



**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM
MAYOR

SHARON K. WASSERMAN
PRESIDENT

Tuesday, 6:00 p.m.,
September 7, 2004

DELENE WOLF
ACTING EXECUTIVE DIRECTOR

POLLY MARSHALL
VICE-PRESIDENT

25 Van Ness Avenue, #70, Lower Level

DOCUMENTS DEPT.

AGENDA

SEP - 3 2004

SAN FRANCISCO
PUBLIC LIBRARY

09-03-04 AGG:44 RCVD

- LARRY BEACH BECKER
DAVID GRUBER
DEBORAH HENDERSON
JIM HURLEY
ANTHONY JUSTMAN
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY
- I. Call to Order
II. Roll Call
III. Approval of the Minutes
IV. Remarks from the Public

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 383a Elsie AT040100

The tenant appeals the denial of his hardship appeal due to his failure to appear at the hearing.

B. 642 Alvarado St. #210 & 302 AT040099 & AT040108

Two tenants appeal the decision certifying capital improvement costs on the grounds that their liability was extinguished when they vacated their units.

C. 7 Seymour St. AL040095

The landlord appeals the decision granting a claim of unlawful rent increases.

D. 1319 - 19th St. AL040097

The landlord appeals the decision granting a claim of decreased housing services.

E. 307 - 30th Ave. AT040098

The tenants appeal the decision determining the proper base rent and denying claims of decreased housing services and failure to repair.

F. 945 Larkin St. #54 AT040101

The tenant appeals the decision partially granting claims of decreased housing services.

- VI. Communications
- VII. Director's Report
- VIII. Old Business
- IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- IX. New Business
 - Residential Hotel Visitor Policy
- X. Calendar Items
- XI. Adjournment

ACCESSIBLE MEETING POLICY

American sign language interpreters will be available upon request. Please contact the Rent Board at 252-4648 at least 72 hours prior to the meeting. Late requests will be honored if possible. Translation services, sound enhancement or alternative formats are available if requested at least 72 hours prior to the meeting. Call 252-4641 to place your specific request.

會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4641。

Se pueden obtener servicios de traducción, ampliación de sonido, u otras formas de presentación si se solicitan por lo menos 72 horas antes de la reunión. Llame al 252.4641 para hacer su solicitud.

“Individuals with severe allergies, environmental illness, multiple chemical sensitivity or relate disabilities should call our accessibility hotline at (415) 554-8925 to discuss meeting accessibility. In order to assist the City’s efforts to accommodate such people, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.”

Rent Board Commission meetings are held at 25 Van Ness Avenue, Suite 70, lower level, and are wheelchair accessible. The closest accessible BART station is located at Civic Center. Accessible MUNI lines serving this location are the 42 Downtown Loop, the 71 Haight/Noriega and the MUNI Metro at Van Ness and Market Street. For information about MUNI accessible services call 923-6142.

There is accessible parking available on adjacent streets (Oak Street and Hickory). Metered street parking is also available.

Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Ray Cabezas, has been designated to coordinate and carry out this agency’s compliance with the nondiscrimination requirement of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided thereunder, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845,

Know Your Rights Under the Sunshine Ordinance

Government’s duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people’s business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people’s review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force at 554-4851.



GAVIN NEWSOM
MAYOR

SHARON K. WASSERMAN
PRESIDENT

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

DELENE WOLF
ACTING EXECUTIVE DIRECTOR

POLLY MARSHALL
VICE-PRESIDENT

Tuesday, September 7, 2004 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

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DAVID GRUBER
DEBORAH HENDERSON
JIM HURLEY
ANTHONY JUSTMAN
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

I. Call to Order

President Wasserman called the meeting to order at 6:04 p.m.

II. Roll Call

Commissioners Present: Becker; Gruber; Hurley; Mosbrucker;
Wasserman.

Commissioners not Present: Henderson; Justman; Mosser.

Staff Present: Wolf.

Commissioner Marshall appeared on the record at 6:16 p.m.; Commissioner
Murphy arrived at the meeting at 6:20 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of August 24, 2004 with the following
correction: as to new Rules and Regulations Section 6.16
regarding utility passthroughs, subsection (g)(iv) shall read as
follows: "where the laundry facilities are not separately metered
in both the 'base year' and the 'comparison year,' the landlord
shall deduct the actual costs of utilities that serve such laundry
facilities, if proved by the landlord."
(Becker/Gruber: 5-0)

IV. Remarks from the Public

A. Landlord Celia Bloom of the case at 383a Elsie (AT040100) asked how
long a tenant could keep appealing a case.

B. Sarah Norr of the Central City SRO Collaborative spoke in support of a
letter to the Commissioners from the Mission SRO Collaborative. Ms. Norr asked
that the Board convene a Committee, similar to one convened last year, to

examine issues and remaining problems surrounding enforcement of the Residential Hotel Visitor Policy. Ms. Norr asked that the Rent Board "bring the stakeholders together."

C. Allison Lum, Coordinator for the Mission SRO Collaborative, told the Board that the SRO Collaboratives have been conducting surveys among SRO residents to identify remaining problems with the Visitor Policy. Ms. Lum said that, if the Board takes the time to do the process now, a lot of work won't have to be done "down the road."

V. Consideration of Appeals

A. 383a Elsie

AT040100

The landlord's petition for certification of capital improvement costs was granted. The tenant's appeal on the grounds of financial hardship was accepted and remanded for hearing. The tenant failed to appear at the remand hearing and his appeal was, accordingly, denied. On appeal, the tenant claimed that he did not receive a phone call from Rent Board staff on the day of the hearing, as stated in the Decision. The tenant subsequently failed to respond to staff's request to explain his failure to appear at the hearing.

MSC: To continue consideration of this appeal to the next meeting in order for staff to attempt to contact the tenant again; no further continuances will be granted to the tenant.

(Murphy/Wasserman: 4-1; Gruber dissenting)

B. 642 Alvarado St. #210 & 302

AT040099 & AT040108

The tenant in unit #302 filed his appeal seventeen days late because he had moved and the Decision had to be forwarded to his new address.

MSC: To find good cause for the late filing of the appeal.

(Becker/Marshall: 5-0)

The landlord's petition for certification of capital improvement costs to the tenants in 24 units was granted, resulting in passthroughs in the amount of \$91.46 per month. The tenants in two units appeal, claiming that since they vacated the property during a period when the Decision was stayed, they are not liable for payment of retroactive amounts that were certified.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

C. 7 Seymour St.

AL040095

The tenant's petition alleging unlawful increases in rent was granted and the landlord was found liable to the tenant in the amount of \$10,730.51. On appeal, the landlord claims that: the base rent figure in the Decision is incorrect; and the parties entered into a binding settlement agreement regarding the issue raised in the tenant's petition, which should not be disturbed.

MSC; To deny the appeal except to remand the case to the
Administrative Law Judge for a necessary Technical Correction.
(Marshall/Becker: 3-2; Murphy, Gruber dissenting)

D. 1319 – 19th St.

AL040097

The tenant's petition alleging decreased housing services because of the loss of access to the garage was granted and the landlord was found liable to the tenant in the amount of \$220.00. The landlord appeals, maintaining that: the tenant's rental agreement does not provide for use of the garage; the utilities in the apartment are in good working order, so there is no need for the tenant to access the garage; the landlord has no knowledge of the circuit breakers in the building having gone off; the tenant failed to prove her case; and the rent reduction is excessive.

MSC: To deny the appeal. (Becker/Marshall: 5-0)

E. 307 – 30th Ave.

AT040098

The tenants filed a petition seeking a determination of the lawful base rent and alleging decreased housing services and the landlords' failure to repair. The Administrative Law Judge found that the proper rent is \$1,775.38, which includes the restoration of a \$60.00 monthly reduction for the condition of the bathroom ceiling, which had been repaired by the landlord. Claims of cracked and stained ceilings and chipped exterior paint were granted, and rent reductions in the amount of \$60.00 and \$40.00 respectively were ordered. A claim regarding a bathroom electrical outlet was denied. Additionally, the failure to repair claim was found not to have been timely filed. The tenants appeal, claiming that: the ALJ overlooked Federal regulations regarding disclosure of lead based paint and lead hazards in housing; the tenants did not fail to provide access to the landlord to repair the bathroom electrical outlet and the landlord had been given notice of the problem; the failure to repair claim was timely filed because the tenants went to Small Claims Court when the rent increase was noticed in January of 2003; and the increase in rent presents the tenants with a financial hardship.

MSC: To deny the appeal. (Marshall/Murphy: 5-0)

F. 945 Larkin St. #54

AT040101

The tenant's petition alleging decreased housing services was granted, in part, and the landlords were found liable to the tenant in the amount of \$132.00 due to an inaudible telephone entry system. The Administrative Law Judge found that the landlord responded promptly to claims regarding a defective kitchen window and bathroom sink in need of sealant, and so no rent reductions were granted regarding these claims. On appeal, the tenant alleges that: the Administrative Law Judge (ALJ) exhibited bias against her and in favor of the landlord; the ALJ failed to explain procedures pertaining to mediation and arbitration; there are factual inaccuracies in the Decision; and the kitchen window repair was defective and not effectuated in a timely manner.

MSC: To deny the appeal. (Gruber/Murphy: 5-0)

VI. Communications

The Commissioners received the following communications:

A. A letter from the Central City and Mission SRO Collaboratives regarding the Board's annual review of the Residential Hotel Visitor Policy.

B. A Memorandum from Senior Administrative Law Judge Sandy Gartzman regarding possible further amendments to newly enacted Rules and Regulations Section 6.16(i).

VII. Director's Report

Acting Executive Director Wolf informed the Board that she had received a call from Acting Planning Department Director Larry Badiner regarding the variance application for the property at 1460 Montgomery. Mr. Badiner appreciated the Board's offer to be of assistance regarding any questions concerning the Rent Ordinance or the impact of any Planning decisions under the Ordinance. Ms. Wolf also informed the Commissioners that she is attending a weekly meeting with other housing department heads, convened by Matt Franklin of the Mayor's Office of Housing, at the request of the Mayor.

VIII. New Business

Residential Hotel Visitor Policy

The Commissioners briefly discussed the process for their annual review of the Residential Hotel Visitor Policy. Pursuant to the request of the Central City and Mission SRO Collaboratives, Acting Executive Director Wolf agreed to convene a committee of tenant and landlord representatives involved in this issue to make

recommendations to the Board prior to the Public Hearing that will be convened this fall.

IX. Calendar Items

September 14, 2004 - NO MEETING

September 21, 2004

7 appeal considerations (1 cont. from 9/7/04)

Old Business:

Proposed Amendments to Newly Enacted Rules Section 6.16(i)
Regarding Utility Passthroughs

X. Adjournment

President Wasserman adjourned the meeting at 7:02 p.m.



**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM
MAYOR

SHARON K. WASSERMAN
PRESIDENT

DELENE WOLF
ACTING EXECUTIVE DIRECTOR

POLLY MARSHALL
VICE-PRESIDENT

Tuesday, 6:00 p.m.,
September 21, 2004
25 Van Ness Avenue, #70, Lower Level

AGENDA

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09-17-04 A10:01 RCVL

- LARRY BEACH BECKER
DAVID GRUBER
DEBORAH HENDERSON
JIM HURLEY
ANTHONY JUSTMAN
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY
- I. Call to Order
II. Roll Call
III. Approval of the Minutes
IV. Remarks from the Public

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 383a Elsie

AT040100
(cont. from 9/7/04)

The tenant appeals the denial of his hardship appeal based on his failure to appear at the hearing.

B. 981 York St.

AT040110

The tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

C. 1267 Bay St.

AT040105

The tenant appeals the decision denying claims of decreased housing services.

D. 54 Stanford Heights

AT040107

The subtenant appeals the decision finding that she did not pay a disproportional share of the rent.

E. 1770 Broadway #101, 501 & 605

AT040102 thru -04

Three tenants appeal the decision partially denying claims of decreased housing services.

F. 2030 Vallejo St.

AL040106

The landlord appeals the decision finding that housing services had not been fully restored and additionally granting claims of decreased housing services.

G. 738 Duncan St.

AL040109

The landlord appeals the decision granting a claim of unlawful rent increases.

VI. Communications

VII. Director's Report

VIII. Old Business

Proposed Amendments to Newly Enacted Rules Section 6.16(i)
Regarding Utility Passthroughs

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

IX. New Business

X. Calendar Items

XI. Adjournment



ACCESSIBLE MEETING POLICY

American sign language interpreters will be available upon request. Please contact the Rent Board at 252-4603 at least 72 hours prior to the meeting. Translation services, sound enhancement or alternative formats are available if requested at least 72 hours prior to the meeting. Call 252-4603 to place your specific request. Late requests will be honored if possible.

會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4603。

Se pueden obtener servicios de traduccion, ampliacion de sonida, u otras formas de presentacion si se solicitan por lo menos 72 horas antes de la reunion. Llame al 252-4603 para hacer su solicitud.

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City of San Francisco
The Rent Board

September 21, 2004

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

**Tuesday, September 21, 2004 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level**

I. Call to Order

President Wasserman called the meeting to order at 6:05 p.m.

II. Roll Call

Commissioners Present: Becker; Hurley; Marshall; Mosbrucker; Mosser.

Commissioners not Present: Murphy; Wasserman.

Staff Present: Gartzman; Wolf.

Commissioner Gruber appeared on the record at 6:06 p.m.; Commissioner Justman arrived at the meeting at 6:08 p.m.; and Commissioner Henderson appeared at 6:14 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of September 7, 2004.

(Becker / Marshall: 4-0)

IV. Remarks from the Public

A. Celia Bloom, the landlord in the case concerning 383a Elsie, told the Board that she has documents that show that the tenant has mis-represented his income.

V. Consideration of Appeals

A. 383a Elsie AT040100

(cont. from 9/7/04)

The landlord's petition for certification of capital improvement costs was granted. The tenant's appeal on the grounds of financial hardship was accepted

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and remanded for hearing. The tenant failed to appear at the remand hearing and his appeal was, accordingly, denied. On appeal, the tenant claimed not to have received a phone call from Rent Board staff on the day of the hearing, as stated in the Decision. The tenant subsequently failed to respond to staff's request to explain his failure to appear at the hearing. At the September 7th Board meeting, the Commissioners voted to continue consideration of this appeal in order for staff to attempt to contact the tenant again, with the proviso that no further continuances will be granted to the tenant. The tenant subsequently furnished a Declaration of Non-Receipt of Notice of Hearing.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship; should the tenant fail to appear, absent extraordinary circumstances, no further hearings will be granted to the tenant. (Becker/Marshall: 5-0)

B. 981 York St. AT040110

The landlord's petition for certification of the costs of a new heating system to the tenant in one unit was granted, resulting in a monthly passthrough in the amount of \$58.12. The tenant appeals the decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship.

(Becker/Marshall: 5-0)

C. 1267 Bay St. AT040107

The tenant's petition alleging various decreased housing services in his unit was denied because the Administrative Law Judge found that the problems were not substantial or the tenant had not put the landlord on notice. The tenant appeals, maintaining that: the Administrative Law Judge did not take into account the many letters he had written to the landlord complaining of the conditions; and the landlord delayed in making repairs because he was upset at the outcome of a prior case before the Rent Board.

MSC: To deny the appeal. (Justman/Gruber: 5-0)

D. 54 Stanford Heights AT040107

The subtenant's petition alleging that she paid a disproportional share of the rent pursuant to Rules and Regulations Section 6.15C(3) was denied. The Administrative Law Judge found that the allocation of rent between the master tenant and subtenant was equitable because of the utility costs borne by the master tenant and additional housing services provided by her. The subtenant appeals, claiming that: the lease provides that utilities are included in the rent; and the master tenant gave false testimony at the hearing regarding utility costs.

MSC: To deny the appeal. (Justman/Gruber: 5-0)

E. 1770 Broadway #101, 501 & 605 AT040102 thru -04

The decreased services claims of three tenants regarding inadequate common area maintenance were denied. The claim of the tenant in unit #605 regarding a leaking and noisy radiator was granted and the landlord was found liable to the tenant in the amount of \$60.00. The three tenant petitioners appeal the denial of the common area maintenance claim, arguing that: the Administrative Law Judge failed to make "Findings of Fact"; there are significant errors and omissions in the Decision and it is unsupported by the evidence; the rent reduction granted is grossly inadequate; claims that were denied should have been granted; the tenants proved their case through photographic evidence; the landlord was not credible at the hearing and gave false testimony; oral evidence should only have been taken upon oath or affirmation, which was not the case; the landlord's witnesses were biased; and the landlord has engaged in a pattern of retaliation against the tenants.

MSC: To recuse Commissioner Mosser from consideration of this appeal. (Hurley/Justman: 5-0)

MSC: To deny the appeals. (Gruber/Hurley: 5-0)

F. 2030 Vallejo St. AL040106

The petitions of nine tenants were granted with regard to claims of decreased housing services due to the loss of full-time doorman service in this luxury building, in the amount of \$200.00 per month. Additionally, individual decrease in services claims were granted for some tenants. Subsequently, the landlord alleged that he had restored the doorman service and reinstated the rent reductions. The instant petitions allege that the services have not been fully restored, in addition to asserting new individual claims. Two tenants not involved in the original case also filed petitions asserting the doorman claim, as well as individual claims. The Administrative Law Judge granted the two new petitioners the same relief as was granted in the original case for the period of time until the landlord partially restored doorman services. For all petitioners, from that point forward, the tenants were granted a continuing \$50.00 per month rent reduction due to the fact that the services provided by the doormen have not been fully restored. On-going rent reductions for loss of general maintenance and repair services were found not to be warranted, although several individual claims were granted. The landlord appeals the ongoing \$50.00 per month rent reduction for reduced doorman service, and \$75.00 rent reductions granted for broken ovens in two units, arguing that: the Rent Board does not have jurisdiction over the doorman dispute, because it is a breach of contract action for damages and is not necessary to effectuate the Rent Board's regulatory purposes; the landlord has been deprived of his right to have the dispute heard by a jury; the landlord did not consent to have the issues heard before the Rent Board, which violates the judicial powers clause; and the tenants have failed to meet their burden of proving their ovens do not work.

Acting Executive Director Wolf informed the Board that Judge Warren recently heard oral argument on the landlord's Writ of the original decision in this case. It was therefore the consensus of the Board to continue consideration of this appeal until receipt of the court's order on the Writ.

G. 738 Duncan St. AL040109

The tenant's petition alleging unlawful rent increases was granted and the landlord was found liable to the tenant in the amount of \$19,975.00. On appeal, the landlord asserts that: the Administrative Law Judge refused to

accept information from the landlord showing the justification for the \$100 rent increase; the ALJ counseled the tenant against mediating the dispute; the landlord was not credited with increases that he would have been entitled to; and the rent was increased because the tenant's girlfriend occupied the unit, and due to increased water and garbage fees.

MSC: To deny the appeal. (Becker/Marshall: 5-0)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. The office workload statistics for the month of August, 2004.

B. A Memorandum from Senior Administrative Law Judges Sandy Gartzman and Tim Lee regarding necessary amendments to recently adopted Rules and Regulations Section 6.16(i), in order to conform that Section to Rules and Regulations Section 6.16(g).

C. A copy of Charter Section 4.104(1) regarding requirements for adoption of Rules and Regulations.

VII. Director's Report

Acting Executive Director Wolf informed the Board that, according to Deputy City Attorney Marie Blits and pursuant to Charter Section 4.104, the Board could amend Rules and Regulations Section 6.16(i) at this evening's meeting as long as public comment was taken, as it had been properly itemized on the Agenda. Ms. Wolf also informed the Board that only ten days notice is required for a Public Hearing, rather than fifteen, and no separate Notice of Public Hearing is required, as long as the proposed amendments are properly listed on the Agenda. Additionally, it is not required that the Board provide the public with copies of proposed regulations in advance of a Public Hearing, as long as the amendments are available upon request. Ms. Wolf suggested that the Board continue with their current practice of providing separate Notices of Public Hearing and copies of the proposed regulations to the public in advance, except for certain issues which are of little import to members of the landlord and tenant communities. The Commissioners concurred with this approach. Ms. Wolf also told the Board that she had been informed that legislation will be introduced to require that the Board meet at City Hall and that Board meetings be televised.

VIII. Old Business

Proposed Amendments to Newly Enacted Rules Section 6.16(i) Regarding Utility Passthroughs

At their meeting on August 24th, the Commissioners held a Public Hearing on proposed amendments to Rules and Regulations Sections 1.19, 4.11 and 10.12 and proposed new Rules Sections 6.16 and 10.13 regarding utility passthroughs. At the conclusion of the Public Hearing, the Commissioners passed the proposed amendments, with the addition of an amendment suggested by Commissioner Marshall, which allowed landlords a third alternative for calculating utility costs for laundry facilities on the premises, i.e. to prove the actual cost of utilities that serve any laundry facilities on the premises (Rules and Regulations Section 6.16(g)). Subsequently, Senior Administrative Law Judges Sandy Gartzman and Tim Lee informed the Commissioners

that it was necessary to amend Rules and Regulations Section 6.16(i), which describes the methodology for calculating utility passthroughs, to include this new alternative method for calculating the utility costs for laundry facilities. The proposed amendments to Section 6.16(i) are shown below, with additions indicated by underlining and deletions indicated by strikethrough:

(i) The landlord shall calculate the amount of the utility passthrough as follows:

(i) Compile the utility bills for the "base year" and the "comparison year" as defined in subsections (b), (c) and (d) above. The utility passthrough shall be based on actual costs incurred by the landlord during the relevant calendar years, regardless of when the utility bill was received or paid.

(ii) Calculate the total utility cost for the "base year" and the total utility cost for the "comparison year".

(iii) Where ~~applicable~~ the laundry facilities are not separately metered in both the "base year" and the "comparison year", compile evidence of ~~any and all laundry facilities income actually received or collected by the landlord for the use of the laundry facilities in the "base year" and the "comparison year". Calculate the total laundry facilities income for the "base year" and the total laundry facilities income for the "comparison year" and calculate the actual cost of utilities that serve the laundry facilities in the "base year" and the "comparison year".~~

(A) Where the landlord cannot prove the actual cost of utilities that serve the laundry facilities and a third party vendor collects the user fees from the laundry facilities, compile evidence of and calculate the income actually received by the landlord from the third party vendor for the use of the laundry facilities in the "base year" and the "comparison year".

(B) Where the landlord cannot prove the actual cost of utilities that serve the laundry facilities and the landlord collects the user fees from the laundry facilities, compile evidence of the user fees actually collected by the landlord for the use of the laundry facilities in the "base year" and the "comparison year" and calculate 50% of the amount collected.

(iv) Where ~~applicable~~ the laundry facilities are not separately metered in both the "base year" and the "comparison year", subtract the utility costs for the laundry facilities ~~income~~, as calculated in subsection (iii) above, from the total utility cost for the "base year" and the total utility cost for the "comparison year".

(v) Subtract the total "base year" utility cost (excluding utility costs for the laundry facilities ~~income~~) from the total "comparison year" utility cost (excluding utility costs for the laundry facilities ~~income~~) to get the utility cost increase. If there is no increase or if there has been a decrease, no passthrough is allowed.

(vi) Divide the resulting figure, if greater than zero, by twelve (12) to determine the average monthly utility increase for the entire property.

(vii) Divide the average monthly utility increase by the number of rooms

in the property to get the amount of the utility passthrough that may be imposed for each room. For purposes of this section, the number of rooms in a property shall be calculated by presuming that single rooms without kitchens are one room units, studios are two room units, one bedroom units without a separate dining room are three room units, and so on. Each parking space and garage space in the building, which is included in a tenant's rental or for which a user fee is charged, shall be counted as one room. Areas used for commercial purposes but for which no user fee is charged to the tenants, including but not limited to management offices and retail space, shall be included in the room count in a manner that most reasonably takes into account the size of the space and its utility usage.

(viii) To get the monthly utility passthrough for a unit, add the number of rooms in the unit to the number of rooms for parking and/or garage spaces included in the tenant's rental or for which a user fee is paid by the tenant, and multiply that total number of rooms by the monthly utility increase per room.

After discussion, the Board opened this issue for public comment, of which there was none. The Commissioners then passed the following motion:

MSC: To adopt the proposed additional amendments to Rules and Regulations Section 6.16(i) in order to conform that Section to Rules and Regulations Section 6.16(g).
(Becker/Justman: 5-0)

IV. Remarks from the Public (cont.)

B. Arun Mitra told the Board that their deliberations constituted "the finest example of consensus-building"; that he was impressed by the intelligence of the group; and that it was "refreshing" to see the rule of law prevail.

C. Tenant appellant Robert Rifkin of 1770 Broadway (AT040102 thru -04) expressed his disappointment with the Board's decision on the tenants' appeals. He told the Board that "consensus-building is not the only function of a quasi-adjudicatory body." Mr. Rifkin believes that the Board needs to get more feedback from tenants; that they chose to ignore serious violations of the Rules and Regulations and due process; that they "mollycoddled" an irresponsible landlord; and "rubber-stamped" a decision based on false evidence. Mr. Rifkin feels that the Board has tilted towards landlords ever since the issuance of the Golden Gateway decision and for that reason, he will be working on the campaign for an elected Rent Board.

IX. Calendar Items

September 28th, October 5th & October 12th, 2004 - NO MEETINGS

October 19, 2004

6 appeal considerations (1 cont. from 9/21/04; 1 rescheduled from 10/5/04)

X. Adjournment

President Wasserman adjourned the meeting at 7:05 p.m.



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City of San Francisco
The Rent Board

October 19, 2004

NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,

Tuesday, 6:00 p.m.,
October 19, 2004
25 Van Ness Avenue, #70, Lower Level

AGENDA

I. Call to Order

II. Roll Call

III. Approval of the Minutes

IV. Remarks from the Public

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NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 710 Sacramento #2 AL040111

(rescheduled from 10/5/04)

The landlord appeals the decision granting a claim of unlawful rent increases.

B. 422 - 9th Ave. AT040112

The tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

C. 1845 Franklin #303 AT040113

The tenant appeals the decision certifying capital improvement costs on the grounds of financial hardship.

D. 1809 California #103 AT040115

The tenant appeals the Minute Order certifying capital improvement costs on

the grounds of financial hardship.

E. 2030 Vallejo St. AL040106

(cont. from 9/21/04)

The landlord appeals the decision finding that housing services had not been fully restored and granting additional claims of decreased housing services.

F. 2201 Pacific Ave. #602 AT040114

The tenant appeals the determination that he is not a "Tenant in Occupancy" pursuant to Rules and Regulations Section 1.21.

VI. Communications

VII. Director's Report

VIII. Old Business

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

IX. New Business

X. Calendar Items

XI. Adjournment



SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

LARRY BEACH BECKER
DAVID GRUBER
DEBORAH HENDERSON
JIM HURLEY
ANTHONY JUSTMAN
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

GAVIN NEWSOM
MAYOR

DELENE WOLF
ACTING EXECUTIVE DIRECTOR

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Tuesday, October 19, 2004 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Wasserman called the meeting to order at 6:10 p.m.

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II. Roll Call

Commissioners Present: Becker; Henderson; Hurley; Justman;
Mosbrucker; Mosser; Murphy; Wasserman.
Commissioners not Present: Gruber; Marshall.
Staff Present: Wolf.

Commissioner Murphy appeared on the record at 6:11 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of October 5, 2004.
(Becker/Mosser: 5-0)

IV. Remarks from the Public

Attorney Steve Williams, representing the tenant at 2201 Pacific Ave. #602 (AT040114), apologized for his late brief but informed the Board that he didn't get the transcript of the hearing until recently. He asked that the Board review his submission or continue consideration of the appeal, as the Decision that the unit is not the tenant's principal place of residence presents a hardship for the tenant. Mr. Williams maintained that the landlord failed to provide evidence requested by the Administrative Law Judge and said that the Decision was not based on the elements in the Statute.

V. Consideration of Appeals

A. 710 Sacramento #2

AL040111

The tenant's petition alleging unlawful rent increases was granted and the landlord was found liable to the tenant in the amount of \$2,325.00. On appeal, the landlord claims that there is a calculation error in the decision in that he did not get credit for a period of allowable banking.

MSC: To deny the appeal. (Becker/Mosbrucker: 5-0)

B. 422 – 9th Ave. #103

AT040112

The landlord's petition for certification of capital improvement costs was granted, resulting in a monthly passthrough in the amount of \$78.18 to the tenants in 10 of 15 units. One tenant appeals the Decision on the grounds of financial hardship.

MSC: To recuse Commissioner Murphy from consideration of this appeal. (Murphy/Justman: 5-0)

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Mosser: 5-0)

C. 1845 Franklin #303

AT040113

The landlords' petition for certification of capital improvement costs was granted, resulting in a monthly passthrough in the amount of \$36.25 to the tenants in 16 of 30 units. One tenant appeals the Decision on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Mosser: 5-0)

D. 1809 California #103

AT040115

The landlord's petition for certification of capital improvement costs was granted, resulting in a monthly passthrough in the amount of \$3.03 for the tenants in 15 of 25 units. One tenant appeals the Minute Order on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Becker/Mosser: 5-0)

E. 2030 Vallejo St.

AL040106

(cont. from 9/21/04)

The petitions of nine tenants were granted with regard to claims of decreased housing services due to the loss of full-time doorman service in this luxury building, in the amount of \$200.00 per month. Additionally, individual decrease in

services claims were granted for some tenants. Subsequently, the landlord alleged that he had restored the doorman service and reinstated the rent reductions. The instant petitions allege that the services have not been fully restored, in addition to asserting new individual claims. Two tenants not involved in the original case also filed petitions asserting the doorman claim, as well as individual claims. The Administrative Law Judge granted the two new petitioners the same relief as was granted in the original case for the period of time until the landlord partially restored doorman services. For all petitioners, from that point forward, the tenants were granted a continuing \$50.00 per month rent reduction due to the fact that the services provided by the doormen have not been fully restored. On-going rent reductions for loss of general maintenance and repair services were found not to be warranted, although several individual claims were granted. The landlord appeals the ongoing \$50.00 per month rent reduction for reduced doorman service, and \$75.00 rent reductions granted for broken ovens in two units, arguing that: the Rent Board does not have jurisdiction over the doorman dispute, because it is a breach of contract action for damages and is not necessary to effectuate the Rent Board's regulatory purposes; the landlord has been deprived of his right to have the dispute heard by a jury; the landlord did not consent to have the issues heard before the Rent Board, which violates the judicial powers clause; and the tenants have failed to meet their burden of proving their ovens do not work.

As a decision on the landlord's Writ of the original decision in this case is expected shortly, it was the consensus of the Board to further continue consideration of this appeal until receipt of the court's order.

F. 2201 Pacific Ave. #602

AT040114

The landlord's petition for a determination pursuant to Rules and Regulations Section 1.21 was granted, because the Administrative Law Judge found that the tenant did not occupy the subject unit as his principal place of residence. On appeal, the tenant maintains that: he resides at the subject property at least half-time; he supplied sufficient evidence to meet his burden of proof; the statute should be flexible enough to accommodate alternative lifestyles; the landlord failed to provide evidence that was requested by the Administrative Law Judge; and the statute is in violation of state, federal and municipal laws.

Pursuant to the request of the tenant's attorney, and by consensus of the Board, consideration of this appeal was continued to the next meeting with the proviso that the landlord's response to the tenant's brief will be the last submission accepted from either party.

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

A. A pending litigation status report prepared by Senior Administrative Law Judge Tim Lee.

B. The Court of Appeal decision in the case of Action Apartment Association v. City of Santa Monica (Second District Court of Appeal Case No. B165082). The appellate decision upholds the original decision in the case, which struck down the anti-harassment provisions of the Santa Monica Rent Ordinance and found that eviction notices are protected by the litigation privilege.

VII. Director's Report

Acting Executive Director Delene Wolf informed the Board that she had been told that there will be a Special Election in the spring, at which time an anti-demolition ordinance will be going on the ballot. It does not appear that any proposal for change in the way that Rent Board Commissioners are appointed will be on the ballot at that time. Ms. Wolf also told the Board that the first meeting of the SRO Hotel Visitor Policy Committee will be held at the Rent Board Office on October 25th from 9:30 a.m. until noon. Lastly, the Commissioners were reminded that they are invited to attend the Mayor's State of the City address on October 21st at 1:00 p.m.

VIII. Calendar Items

October 26th & November 2nd, 2004 - NO MEETINGS

November 9, 2004

6 appeal considerations (2 cont. from 10/19/04)

IX. Adjournment

President Wasserman adjourned the meeting at 6:40 p.m.



SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM
MAYOR

DELENE WOLF
ACTING EXECUTIVE DIRECTOR

Tuesday, 6:00 p.m.,
November 9, 2004
25 Van Ness Avenue, #70, Lower Level

AGENDA

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11-05-04 4:11:11 PM

- LARRY BEACH BECKER
DAVID GRUBER
DEBORAH HENDERSON
JIM HURLEY
ANTHONY JUSTMAN
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY
- I. Call to Order
 - II. Roll Call
 - III. Approval of the Minutes
 - IV. Remarks from the Public

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- V. Consideration of Appeals

A. 3600 - 20th St. #105 & 112 AT040123 & -24

The tenants in two units appeal the decision certifying capital improvement costs on the grounds of financial hardship.

B. 1233 Taylor #2, 3, 4, 5 & 6 AL040119

The landlord appeals the decision partially certifying capital improvement costs.

C. 1871 Green St. AL040117

The landlord appeals the decision granting a claim of unlawful rent increase, finding that the building is not exempt pursuant to Costa-Hawkins.

D. 610 Shotwell St. #5 AT040118

The tenants appeal the decision finding that the unit is not their principal place of residence pursuant to Rules and Regulations Section 1.21.



E. 2201 Pacific #602

AT040114

(cont. from 10/19/04)

The tenant appeals the decision finding that the unit is not his principal place of residence pursuant to Rules and Regulations Section 1.21.

F. 2030 Vallejo St.

AL040106

(cont. from 10/19/04)

The landlord appeals the decision finding that housing services had not been fully restored and granting additional claims of decreased housing services.

VI. Communications

VII. Director's Report

VIII. Old Business

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

IX. New Business

X. Calendar Items

XI. Adjournment



ACCESSIBLE MEETING POLICY

American sign language interpreters will be available upon request. Please contact the Rent Board at 252-4603 at least 72 hours prior to the meeting. Translation services, sound enhancement or alternative formats are available if requested at least 72 hours prior to the meeting. Call 252-4603 to place your specific request. Late requests will be honored if possible.

會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4603。

Se pueden obtener servicios de traduccion, ampliacion de sonida, u otras formas de presentacion si se solicitan por lo menos 72 horas antes de la reunion. Llame al 252-4603 para hacer su solicitud.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.

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There is accessible parking available on adjacent streets (Oak Street and Hickory). Metered street parking is also available.

Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Timothy Lee has been designated to coordinate this agency's compliance with the nondiscrimination requirements of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided under the Act, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

For more information on your rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the Ordinance, contact the Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlet Place, Room 244, San Francisco, CA 94102 at 554-7724.

City and County of San Francisco

Residential Rent Stabilization
and Arbitration Board



SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,

GAVIN NEWSOM
MAYOR

DELENE WOLF
ACTING EXECUTIVE DIRECTOR

Tuesday, November 9, 2004 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

LARRY BEACH BECKER
DAVID GRUBER
DEBORAH HENDERSON
JIM HURLEY
ANTHONY JUSTMAN
CATHY MOSBRUCKER
NEVED MOSSE
BARTHOLOMEW MURPHY

I. Call to Order

President Wasserman called the meeting to order at 6:09 p.m.

II. Roll Call

Commissioners Present: Becker; Gruber; Henderson; Hurley;
Wasserman.
Commissioners not Present: Marshall; Mosbrucker; Mosser.
Staff Present: Wolf.

Commissioner Murphy appeared on the record at 6:12 p.m. and
Commissioner Justman arrived at the meeting at 6:14 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of October 19, 2004.
(Hurley/Gruber: 5-0)

IV. Consideration of Appeals

A. 3600 ~ 20th St. #105 & 112 AT040123 & -24

The landlords' petition for certification of capital improvement costs to 39 of 51
units was granted. Two tenants appeal the decision on the grounds of financial
hardship.

MSC: To accept the appeals and remand the cases to the
Administrative Law Judge for a hearing on the tenants' claims of
financial hardship. (Becker/Henderson: 5-0)

B. 1233 Taylor #2, 3, 4, 5 & 6 AL040119

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The landlord's petition for certification of capital improvement costs for five of six units was granted, in part. However, the costs of new skylight glass were found to be in the nature of repair, rather than capital improvement. On appeal, the landlord claims that he incorrectly depicted the skylight work at the hearing, and that a new frame and wireglass were installed, in addition to new glass.

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the record to consider the new evidence submitted by the landlord on appeal; a hearing will be held only if necessary. (Gruber/Murphy: 5-0)

C. 1871 Green St.

AL040117

The tenants' petition alleging an unlawful rent increase from \$5,700.00 to \$6,500.00 was granted because the Administrative Law Judge found that the subject premises is a two-unit building and not a single family dwelling, and therefore is not exempt pursuant to Costa-Hawkins. The landlord appeals, maintaining that: the Administrative Law Judge gave improper weight to property tax records and permit applications, which do not reflect the legal use of the premises; the building contains only a single dwelling unit, and a separate unit was removed by the landlord with permits; the actual use of the property, rather than the legal use, should determine jurisdiction; and the unit is separately alienable from any other dwelling unit.

MSC: To deny the appeal without prejudice to a future rent increase should the second unit be legally removed.
(Becker/Henderson: 5-0)

D. 610 Shotwell St. #5

AT040118

The landlord's petition seeking a determination pursuant to Rules and Regulations Section 1.21 was granted and the Administrative Law Judge found that the tenants did not occupy the subject unit as their principal place of residence. The tenants failed to appear at the properly noticed hearing. On appeal, they claim that: the landlord's representatives provided false information at the hearing; the subject unit was provided by the landlord as an extension of unit 2 in the building, which is occupied by the tenant and his family; the subject unit is not used for storage, but as an extra bedroom; and the rent increase notice was served on the tenants prior to the petition being filed.

MSC: To deny the appeal. (Gruber/Murphy: 4-1;
Becker dissenting)

E. 2201 Pacific #602

AT040114
(cont. from 10/19/04)

The landlord's petition for a determination pursuant to Rules and Regulations Section 1.21 was granted, because the Administrative Law Judge found that the tenant did not occupy the subject unit as his principal place of residence. On appeal, the tenant maintains that: he resides at the subject property at least half-time; he supplied sufficient evidence to meet his burden of proof; the statute should be flexible enough to accommodate alternative lifestyles; the landlord failed to provide evidence that was requested by the Administrative Law Judge; and the statute is in violation of state, federal and municipal laws. This case was continued from the meeting on October 19th in order for the landlord to be able to respond to the tenant's brief.

MSC: To deny the appeal. (Gruber/Murphy: 5-0)

F. 2030 Vallejo St.

AL040106
(cont. from 10/19/04)

The petitions of nine tenants were granted with regard to claims of decreased housing services due to the loss of full-time doorman service in this luxury building, in the amount of \$200.00 per month. Additionally, individual decrease in services claims were granted for some tenants. Subsequently, the landlord alleged that he had restored the doorman service and reinstated the rent reductions. The instant petitions allege that the services have not been fully restored, in addition to asserting new individual claims. Two tenants not involved in the original case also filed petitions asserting the doorman claim, as well as individual claims. The Administrative Law Judge granted the two new petitioners the same relief as was granted in the original case for the period of time until the landlord partially restored doorman services. For all petitioners, from that point forward, the tenants were granted a continuing \$50.00 per month rent reduction due to the fact that the services provided by the doormen have not been fully restored. On-going rent reductions for loss of general maintenance and repair services were found not to be warranted, although several individual claims were granted. The landlord appeals the ongoing \$50.00 per month rent reduction for reduced doorman service, and \$75.00 rent reductions granted for broken ovens in two units, arguing that: the Rent Board does not have jurisdiction over the doorman dispute, because it is a breach of contract action for damages and is not necessary to effectuate the Rent Board's regulatory purposes; the landlord has been deprived of his right to have the dispute heard by a jury; the landlord did not consent to have the issues heard before the Rent Board, which violates the judicial powers clause; and the tenants have failed to meet their burden of proving their ovens do not work. This appeal was continued on two occasions in

order to receive the court's Order on the landlord's Writ of the original decision in this case.

MSC: To deny the appeal. (Murphy/Gruber: 5-0)

V. Director's Report

Acting Executive Director Delene Wolf informed the Board that the first meeting of the SRO Hotel Visitor Policy Committee had been convened. Tenants represented by the SRO Collaboratives have put forth a list of amendments they would like to see to the Policy. Ms. Wolf will inform the Commissioners as to any areas where a consensus is reached between the landlord and tenant representatives to the Committee. The Committee will meet one additional time prior to the Public Hearing. In order not to have to wait until the New Year to schedule the Public Hearing, the Commissioners agreed to hold a Special Meeting for that purpose on Wednesday, December 8th at 6:00 p.m.

VI. Calendar Items

November 16, 2004 - NO MEETING

November 23, 2004

3 appeal considerations

Parkmerced:

O&M Remand: 2 hardship appeals & 3 substantive appeals

Repiping Case: 4 hardship appeals & 7 substantive appeals

VII. Adjournment

President Wasserman adjourned the meeting at 7:00 p.m.

City and County of San Francisco

Residential Rent Stabilization
and Arbitration Board

NOTICE OF THE REGULAR MEETING OF THE SAN FRANCISCO RESIDENTIAL RENT STABILIZATION & ARBITRATION BOARD,

GAVIN NEWSOM
MAYOR

SHARON K. WASSERMAN
PRESIDENT

DELENE WOLF
ACTING EXECUTIVE DIRECTOR

POLLY MARSHALL
VICE-PRESIDENT

Tuesday, 6:00 p.m.,
November 23, 2004
25 Van Ness Avenue, #70, Lower Level

AGENDA

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LARRY BEACH BECKER
DAVID GRUBER
DEBORAH HENDERSON
JIM HURLEY

I. Call to Order

NOV 17 2004

ANTHONY JUSTMAN
CATHY MOSBRUCKER

II. Roll Call

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NEVEO MOSSER
BARTHOLOMEW MURPHY

III. Approval of the Minutes

11-17-04P02:06 RCVD

IV. Remarks from the Public

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

V. Consideration of Appeals

A. 520 So. Van Ness #265

AT040137

The tenant appeals the dismissal of her petition alleging decreased housing services.

B. 1321 Montgomery #A

AL040120

The landlord appeals the decision granting rent reductions due to the presence of mold in the unit.

C. 3250 Market St., Apt. 5

AT040116

The tenants appeal the determination that the unit is no longer the principal place of residence of the original tenant, pursuant to Rules and Regulations Section 1.21.

D. Parkmerced: O&M Remand Decision

The tenants in four units appeal the remand decision granting 7% base rent increases based on increased operating expenses, two on substantive grounds and two claiming financial hardship.



122 Cardenas Ave.	AT040139 & AT040140
125 Cambon Dr. #12H	AT040141
150 Font Blvd. #7B	AT040142
128 Garces Dr.	AT040145

E. Parkmerced: Repiping Case

The tenants in seven units appeal the decision certifying the costs of a repiping/irrigation project, seven on substantive grounds and four additionally alleging financial hardship.

412 Font Blvd.	AT040125
2 Fuente Ave.	AT040126 & AT040131
12 Fuente Ave.	AT040127 & AT040132
16 Fuente Ave.	AT040128
159 Serrano Dr.	AT040129 & AT040133
231 Serrano Dr.	AT040130 & AT040134
28 Fuente Ave.	AT040135

- VI. Communications
- VII. Director's Report
- VIII. Old Business
- IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- IX. New Business
- X. Calendar Items
- XI. Adjournment

City and County of San Francisco

Residential Rent Stabilization and
Arbitration Board

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(S/04) snstsh/Board/accmgt



SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

LARRY BEACH BECKER
DAVID GRUBER
DEBORAH HENDERSON
JIM HURLEY
ANTHONY JUSTMAN
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM
MAYOR

DELENE WOLF
ACTING EXECUTIVE DIRECTOR

Tuesday, November 23, 2004 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level

I. Call to Order

President Wasserman called the meeting to order at 6:09 p.m.

II. Roll Call

Commissioners Present: Becker; Gruber; Henderson; Hurley
Marshall; Wasserman.
Commissioners not Present: Mosbrucker; Mosser; Murphy.
Staff Present: Gartzman; Wolf.

Commissioner Justman appeared on the record at 6:14 p.m. Commissioner
Becker left the meeting at 6:31 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of November 9, 2004.
(Becker/Gruber: 5-0)

IV. Remarks from the Public

A. Robert Pender, Vice-President of the Parkmerced Residents' Organization (PRO), told the Board that Carmel Development and Management Corporation bought the property in July of 1999, and immediately began filing petitions for rent increases. PRO has been providing representation to the affected tenants, but they're "amateurs." Mr. Pender is proud that PRO has done so.

B. Tenant Julian Lagos filed an appeal of the remand decision in the Parkmerced operating and maintenance expense increase case (AT010145). Mr. Lagos told the Board that he has never seen a landlord as bad as Carmel Properties, who are filing innumerable petitions to force tenants out and sell the property. Mr. Lagos said that newer tenants have privileges that older tenants do

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not have, and that he has had to call the Department of Building Inspection to get repairs made.

C. Tenant Norma Hall filed appeals of the remand decision in the Parkmerced operating and maintenance expense increase case (AT010139 & - 40). Ms. Hall said that she is in "shock and disbelief" that the Administrative Law Judge granted the full 7% that the landlord had requested, especially since she is being "bombarded" with other prospective increases. Ms. Hall's rent was \$1,000 seven years ago; now it is in excess of \$1,300.

D. Tenant Carol Fields filed an appeal of the 1.21/Costa-Hawkins case at 3250 Market St., Apt. 5 (AT040116). Ms. Fields told the Board that she has been a roommate at the property for five years. The Master Tenant, Rhessa Jenkins, has been on the road a lot, but "San Francisco is her home." Ms. Fields said that the tenants would have to move if the rent increase is approved and she wonders if the 50% increase is retaliatory.

E. Tenant Cliff Hoffman filed an appeal of the repiping case concerning Parkmerced (AT040135). Mr. Hoffman said that the cost of the capital improvements should have been negotiated in the purchase price for the property; that the rent increase will force him out; and that "the Rules and Regulations don't make it right."

F. Master Tenant Rhessa Jenkins of 3250 Market St. (AT040116) told the Board that San Francisco has been her home for all of her adult life. Ms. Jenkins said that she took a demanding assignment away from San Francisco to improve her financial situation, but made it a condition of the assignment not to compromise her residency. She said that the people she works with in Atlanta know that she lives here.

G. Marilyn Young spoke for tenant Rowland Eggerton regarding the O&M remand decision at Parkmerced (AT040142). Ms. Young explained that Mr. Eggerton is ninety years old and said that the rent increases are hard on him.

V. Consideration of Appeals

A. 520 So. Van Ness #265

AT040137

The tenant's appeal was filed 18 days late because the tenant appears not to have understood the deadline for filing.

MSC: To find good cause for the late filing of the appeal.
(Becker/Marshall: 5-0)

The tenant's petition alleging decreased housing services was dismissed due to her failure to appear at the hearing. On appeal, the tenant claims not to have received notice of the hearing, and attaches the requisite Declaration of Non-Receipt of Notice of Hearing.

MSC: To accept the appeal and remand the case for a new hearing.
(Becker/Marshall: 5-0)

B. 1321 Montgomery #A

AL040120

The tenant's petition alleging decreased housing services due to a leaking window and moldy walls was granted and the landlord was found liable to the tenant in the amount of \$1,400.00. The landlord failed to appear at the original hearing due to a calendaring mistake. Her appeal was accepted and remanded for another hearing. The Decision on Remand upheld the original decision. The landlord appeals the remand decision, arguing that: the tenants failed to notify the landlord that mold had recurred after amelioration efforts in February, 2003; photographs were presented which showed that there wasn't mold in the unit in October, 2003; a DBI Notice of Violation issued in August of 2003 did not cite the landlord for the presence of mold; the condition did not rise to the level of a substantial decrease in housing services; there was no impact on the tenant between April and August 2003; the amount granted is excessive; and the tenant had a retaliatory motive.

Pursuant to a request from the landlord prior to the meeting, consideration of this appeal was rescheduled for the January 4th Board meeting.

C. 3250 Market St., Apt. 5

AT040116

(rescheduled from 11/9/04)

The landlord filed a petition seeking a determination pursuant to Rules Sections 1.21 and 6.14 and the Costa-Hawkins Rental Housing Act. The Administrative Law Judge found that as the tenant no longer permanently resides at the premises, and a subtenant moved in after January 1, 1996, a market rent increase is warranted pursuant to Costa-Hawkins. The tenants appeal, asserting that: the decision was not based on established criteria for residency and the tenant's home is in San Francisco; the tenant's flight records show that she returns to San Francisco as often as she travels to Atlanta for work; the tenant's work-related travel commenced prior to the subtenant's occupancy of the unit; the tenant was financially qualified to rent the unit on her own; the tenant never indicated that she was giving up or subletting the apartment; the unit that the tenant owns in Atlanta is for investment purposes only; the notice of rent increase and 1.21 petition were served within 24 hours of each other; the landlord made

false claims and hearsay statements were admitted at the hearing; and repair requests have been unattended to by the landlords.

MSC: To deny the appeal. (Gruber/Hurley: 3-2; Henderson, Marshall dissenting)

IV. Remarks from the Public (cont.)

G. Allison Lum of the Mission SRO Collaborative distributed a copy of a Report on SRO Visitor Rights: the first section of the Report details violations of the Visitor Policy; the second outlines recommendations. Ms. Lum explained that members of the SRO Tenant Congress conducted this survey in preparation for the Rent Board's annual review of the Visitor Policy. 133 tenants were interviewed in the Mission, South of Market and the Tenderloin. Surveys were taken of 5 randomly selected tenants in each hotel. Interested tenants were invited to the Tenant Congress, where the Report's recommendations were formulated.

V. Consideration of Appeals (cont.)

D. 122 Cardenas Ave.

AT040139 & AT040140

The landlord's petition for rent increases based on increased operating expenses was granted, resulting in 7% increases in tenants' base rents in this multi-unit complex. The joint appeal of 144 tenants was accepted and remanded in order to allocate the expenses between the residential and commercial units on a square footage basis, rather than by using a percentage of income formula. In the Decision on Remand, the costs are allocated between the residential and commercial spaces based on square footage using a "usable area measurement standard" and 7% base rent increases were still found to be warranted for almost all tenant appellants. The tenant at 122 Cardenas Ave. appeals the decision on the grounds of financial hardship and also alleges that: the costs were not fairly allocated between the residential and commercial units; the ALJ erred in assuming that the square footage of the laundry rooms and storage areas were similar in different blocks; the landlord should have been required to obtain actual measurements of all commercial areas in the complex; and carports and parking areas are not available to all tenants and should properly be considered commercial areas.

MSC: To accept the tenant's financial hardship appeal and remand the case for a hearing. (Gruber/Marshall: 5-0)

MSC: To accept the tenant's substantive appeal and remand the case to the Administrative Law Judge only to require the landlord to

provide the actual square footage for the laundry rooms and storage areas in blocks 1, 2, 5 and 6 within three weeks of the mailing of the Notice of Action on Appeal. If this information is not timely provided, the petition will be denied as to this tenant. The tenant's appeal is denied as to all else. (Justman/Marshall: 4-1; Henderson dissenting)

E. 125 Cambon Dr. #12H

AT040141

The tenant at 125 Cambon Dr. #12H appeals the remand decision allowing operating and maintenance expense increases on the grounds that the allocation of costs between residential and commercial areas was not adequately considered, and that tenants who have been paying the noticed increase are entitled to a refund.

MSC: To deny the appeal. (Gruber/Justman: 3-2; Henderson, Marshall dissenting)

F. 150 Font Blvd. #7B

AT010142

The tenant at 150 Font Blvd. #7B appeals the remand decision allowing operating and maintenance expense increases on the grounds of financial hardship.

MSC: To accept the appeal and remand the case for a hearing on the tenant's claim of financial hardship. (Gruber/Justman: 5-0)

G. 128 Garces Dr.

AT040145

The tenant at 128 Garces Dr. appeals the remand decision allowing operating and maintenance expense increases on the grounds that: the landlord waived the right to any retroactive amounts owed by the tenants; the landlord failed to meet its burden of proof regarding measurements of residential and commercial space; the landlord submitted untimely post-hearing submissions which were not served on the tenant appellants; the landlord's measurements are unsupported and without documentation; corporate rentals should be categorized as commercial space; the landlord's witness was not qualified to take such measurements; certain commercial measurements were omitted; and the landlord failed to provide evidence of relevant debt service encumbrances and other operating and maintenance expenses.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to require the landlord to provide the actual square footage for the laundry rooms and storage areas in blocks 1, 2,

5 and 6 and measurements of the administrative offices, conference center, athletic gym and maintenance storage complex within three weeks of the mailing of the Notice of Action on Appeal. If this information is not timely provided, the petition will be denied as to this tenant. A hearing will be held only if necessary. The tenant's appeal is denied as to all other issues. (Marshall/Justman: 3-2; Gruber, Hurley dissenting)

H. 2 Fuente Ave.

AT040131

The landlord's petition for certification of the costs of a repiping/irrigation project was granted, resulting in a monthly passthrough in the amount of \$63.70 to the tenants in 48 of 66 units. The tenant at 2 Fuente Ave. appeals the decision on the grounds of financial hardship.

This appeal was rendered moot by the Board's motion regarding the joint appeal regarding 412 Font, 2, 12 & 16 Fuente & 159 & 231 Serrano (AT040125 -0130), below.

I. 12 Fuente Ave.

AT040132

The landlord's petition for certification of the costs of a repiping/irrigation project was granted, resulting in a monthly passthrough in the amount of \$63.70 to the tenants in 48 of 66 units. The tenant at 12 Fuente Ave. appeals the decision on the grounds of financial hardship.

This appeal was rendered moot by the Board's motion regarding the joint appeal regarding 412 Font, 2, 12 & 16 Fuente & 159 & 231 Serrano (AT040125 -0130), below.

J. 159 Serrano Dr.

AT040133

The landlord's petition for certification of the costs of a repiping/irrigation project was granted, resulting in a monthly passthrough in the amount of \$63.70 to the tenants in 48 of 66 units. The tenant at 159 Serrano Drive appeals the decision on the grounds of financial hardship.

This appeal was rendered moot by the Board's motion regarding the joint appeal regarding 412 Font, 2, 12 & 16 Fuente & 159 & 231 Serrano (AT040125 -0130), below.

K. 231 Serrano Dr.

AT040134

The landlord's petition for certification of the costs of a repiping/irrigation project was granted, resulting in a monthly passthrough in the amount of \$63.70 to the tenants in 48 of 66 units. The tenant at 231 Serrano Drive appeals the decision on the grounds of financial hardship.

This appeal was rendered moot by the Board's motion regarding the joint appeal regarding 412 Font, 2, 12 & 16 Fuente & 159 & 231 Serrano (AT040125 -0130), below.

L. 412 Font Blvd., 2, 12 & 16 Fuente Ave. AT040125 thru -0130
159 & 231 Serrano Dr.
(Joint Merit Appeal)

The landlord's petition for certification of the costs of a repiping/irrigation project was granted, resulting in a monthly passthrough in the amount of \$63.70 to the tenants in 48 of 66 units. The tenants in six units jointly appeal the decision on the following grounds: that the costs should have been allocated on a complex-wide basis, rather than block-by-block; that the petition should have been dismissed since the project was not completed at the time the petition was filed; that the tenants are being denied equal protection under the law because they all received equal benefit from the work and should bear the costs equally; and that the amounts of the passthroughs vary greatly and are inequitable.

MSC: To accept the appeal and remand the case to the Administrative Law Judge to vacate the Decision and dismiss the petition because the work performed was part of a project involving multiple blocks in the complex that was not completed at the time of filing and therefore the case was not ripe for adjudication. The dismissal is without prejudice to the filing of a single petition for certification of the costs of the entire repiping/irrigation project. Pursuant to this motion, the hardship appeals filed by four tenants are moot. (Marshall/Henderson: 3-2; Gruber, Hurley dissenting)

M. 28 Fuente Ave.

AT040135

The landlord's petition for certification of the costs of a repiping/irrigation project was granted, resulting in a monthly passthrough in the amount of \$63.70 to the tenants in 48 of 66 units. The tenant at 28 Fuente Ave. appeals the decision, asserting that: the cost of the property should have reflected the cost of improvements that needed to be made; and tenants should not have to pay for the previous landlord's deferred maintenance.

This appeal was improperly thought to be mooted pursuant to the Board's motion on the joint merit appeal of the six tenants above. Since this tenant was not part of the joint appeal, his individual merit appeal will be considered at the Board meeting on January 4, 2005.

VI. Communications

The Commissioners received a copy of the Notice of Public Hearing for December 8, 2004 at 6:00 p.m. The subject of the Public Hearing will be proposed changes to the SRO Hotel Visitor Policy.

VII. Director's Report

Acting Executive Director Wolf informed the Commissioners that she had attended a meeting of the SRO Health and Safety Task Force on November 17th. She also invited them to the staff holiday party, which will be held at Don Ramon's restaurant on December 16th from noon until 2:00 p.m.

VIII. Calendar Items

November 30th & December 7th, 2004 - NO MEETINGS

December 8, 2004

6:00 Public Hearing: SRO Hotel Visitor Policy

December 14, 2004

8 appeal considerations

XI. Adjournment

President Wasserman adjourned the meeting at 9:05 p.m.



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November 22, 2004

GAVIN NEWSOM
MAYOR

DELENE WOLF
ACTING EXECUTIVE DIRECTOR

SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

NOTICE OF PUBLIC HEARING

DATE: December 8, 2004

TIME: 6:00 P.M.

PLACE: 25 VAN NESS AVENUE (AT MARKET ST.)
ROOM 330A, 3rd Floor
SAN FRANCISCO, CALIFORNIA

LARRY BEACH BECKER
DAVID GRUBER
DEBORAH HENDERSON
JIM HURLEY
ANTHONY JUSTMAN
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

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THE RENT BOARD COMMISSIONERS INVITE THE PUBLIC TO COMMENT ON IMPLEMENTATION OF THE UNIFORM VISITOR POLICY PURSUANT TO SECTION 41D.6 OF THE ADMINISTRATIVE CODE. AS PART OF THE ANNUAL REVIEW PROCESS, A COMMITTEE CONSISTING OF LANDLORD AND TENANT REPRESENTATIVES WAS CONVENED TO CONSIDER RECOMMENDATIONS PUT FORWARD BY THE SRO COLLABORATIVES. CONSENSUS WAS REACHED ON SEVERAL OF THESE RECOMMENDATIONS, AS REFLECTED IN THE ATTACHED MINUTES OF THE LAST COMMITTEE MEETING. INTERESTED PARTIES ARE INVITED TO COMMENT ON THE POLICY OR THE PROPOSED AGREEMENTS AND/OR TO PROPOSE ANY ADDITIONAL AMENDMENTS TO THE POLICY THAT WOULD HELP EFFECTUATE THE GOALS AND REQUIREMENTS OF THIS CHAPTER.

SPEAKERS WILL HAVE THREE (3) MINUTES EACH TO COMMENT ON THE POLICY. COMMENTS MAY ALSO BE MAILED AND SHOULD BE **RECEIVED** AT THE RENT BOARD NO LATER THAN DECEMBER 1, 2004, SO THAT THEY CAN BE MAILED AND RECEIVED BY THE COMMISSIONERS PRIOR TO THE HEARING. COMMENTS ARRIVING AFTER THIS TIME MAY NOT BE RECEIVED IN TIME TO BE ADEQUATELY CONSIDERED.



MINUTES OF THE HOTEL VISITOR POLICY COMMITTEE

MEETING NUMBER: #2

DATE: November 10, 2004

ATTENDEES: D. Burke; J. Collins; H. Karnilowicz; K. Chan; A. Stadlman; S. Patel; G. Kircher; M. Hutchings; C. Abernathy; E. Pound; M. Viturro; M. R. Long; D. Prowler; C. Garza; R. Fairgrieve; D. Wolf

Acting Executive Director Wolf convened the Committee by distributing the Minutes from the last meeting. The Minutes were reviewed and a motion to approve was made, seconded and carried. There was a brief discussion of progress achieved at the first Committee meeting and agreement as to how to proceed. It was reiterated that any changes to the Visitor Policy would take place as the result of a majority vote by the Rent Board Commissioners after a Public Hearing.

The issues for discussion brought forth by the SRO Collaboratives are as follows below:

1. Management should not hold visitor ID's.
2. Management should accept different types of ID's, including jail ID, check cashing ID, and Day Labor Program ID.
3. There should not be check-in/out times for consecutive visitors.
4. No blackout days for visitors.
5. Tenants should not be required to escort visitors to the bathroom or other common areas.
6. Tenants should not be penalized for visitor behavior and there should be just cause for the suspension of visitor rights.
7. No check-in time for overnight visitors.
8. 14 consecutive overnights per month for same visitor; unlimited number for other visitors or non-consecutive stays.
9. Expand visiting hours to 24/7.
10. Children under 18 shouldn't count toward overnight visitor limitation.
11. Caregivers of disabled tenants should be exempt from visitor limitations.

ISSUE #2: Types of ID's: It was reaffirmed that the following types of ID are acceptable: merchant seaman; VA; out-of-state -- as long as there's a picture. The following types of ID were NOT agreed upon: jail ID's; check cashing ID's; Food Stamp ID's; day labor -- these will be put before the Rent Board Commissioners.

ISSUE #11: Caregivers: Currently, the Visitor Policy only specifies that caregivers shall not count against the limit for daytime visitors. It was confirmed that caregivers should also not be counted against the limitation for overnight guests, although the hotel operator would have the right to request medical verification. This amendment could be accomplished in one of two ways: by adding a new Section 1(B)(5) regarding overnight guests, or by deleting Section 1(A)(3) and adding new Section 1(C) to specify that caregivers do not count against both daytime and overnight limitations.

ISSUE #5: Escorting Visitors to the Bathroom or Other Common Areas: This issue is not addressed in the Visitor Policy, but this requirement is found in the House Rules of many non-profit hotels. Discussion centered on the fact that the problem is not where the visitor is found, but what they are doing, which brings up the question of whether residents are responsible for the behavior of their visitors. It was suggested that the following provision be added: "If a visitor(s) is found loitering, the visitor rights of the resident may be affected." Some present felt that it is difficult to define "loitering."

ISSUE #3: Check-in/out Times for Consecutive Visitors: It was agreed that it should not be necessary for visitors staying for consecutive days to check in and out each morning, or when they are leaving the building. It was affirmed that any such guests would count against the limit for daytime guests, and that management is entitled to advance notification of overnight stays. Hotels should have a log or set up whatever system they prefer for keeping track of visitors staying for consecutive days.

ISSUE #7: Check-in Time for Overnight Visitors: The Visitor Policy currently requires notification of an overnight guest by 7:00 p.m. For situations where a tenant does not know ahead of time if they will be having someone stay overnight, it was agreed that should notify management of their intent. If it does not materialize, it will not be held against their limitation. There was a good deal of sentiment for changing the notification time to 9:00 p.m., although it was not unanimous.

ISSUE #10: Children: Currently, the Visitor Policy provides that children under ten years of age shall not count towards the daytime limitation on visitors. There was agreement that the age limit should be raised to thirteen and that this provision should also be moved to the Overnight section. It was also agreed that

court-ordered custodial rights, which end at 17, shall be honored for purposes of consecutive overnight stays. Any such visits shall be counted toward the limitation on the number of overnight visitors.

There was no consensus on issues #8 (the number of consecutive overnights per month), 9 (expansion of visiting hours), 4 (blackout days for visitors) and 6 (whether tenants may be penalized for visitor behavior). These issues and all of the suggestions above will be examined by the Rent Board Commissioners at the Public Hearing to be held on December 8th at 6:00 p.m. at 25 Van Ness, Room 330A.



GAVIN NEWSOM
MAYOR

DELENE WOLF
ACTING EXECUTIVE DIRECTOR

SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

**MINUTES OF THE SPECIAL MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

Wednesday, December 8, 2004 at 6:00 p.m. at
25 Van Ness Avenue, Suite 330A

DOCUMENTS DEPT.

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I. Call to Order

Commissioner Becker called the meeting to order at 6:18 p.m.

II. Roll Call

Commissioners Present:

Becker; Gruber; Henderson; Hurley;
Justman; Mosbrucker; Mosser.

Commissioners not Present:

Marshall; Murphy, Wasserman.

Staff Present:

Wolf.

III. Public Hearing

Residential Hotel Visitor Policy

In anticipation of the Rent Board's annual review of the Hotel Visitor Policy, representatives of the Central City and Mission SRO Collaboratives approached the Board and asked that the Committee that had made suggestions for amendments to the Visitor Policy last year be re-convened. It was represented that large-scale revisions to the Policy were not needed, but that there were certain issues that tenants wanted re-examined. Additionally, it was felt that it would be beneficial to get the major stake-holders together to discuss problems and brainstorm solutions.

At the request of the Commissioners, Acting Executive Director Delene Wolf convened this year's Committee. The Committee met twice, and consisted of representatives of the respective communities. Representatives from the tenant SRO Collaboratives put forth the following list of 11 items which the tenants they represented wished to see changed:

1. Management should not hold visitor ID's.
2. Management should accept different types of ID's, including jail ID, check cashing ID, and Day Labor Program ID.



3. There should not be check-in/out times for consecutive visitors.
4. No blackout days for visitors.
5. Tenants should not be required to escort visitors to the bathroom or other common areas.
6. Tenants should not be penalized for visitor behavior and there should be just cause for the suspension of visitor rights.
7. No check-in time for overnight visitors.
8. 14 consecutive overnights per month for same visitor; unlimited number for other visitors or non-consecutive stays.
9. Expand visiting hours to 24/7.
10. Children under 18 shouldn't count toward overnight visitor limitation.
11. Caregivers of disabled tenants should be exempt from visitor limitations.

On issues where consensus was reached between the landlords and tenants on the Committee, recommendations were forwarded to the Rent Board Commissioners. For issues on which no consensus was achieved, no recommendation was made, although the feelings of the landlord and tenant representatives were conveyed to the Board members. The Public Hearing convened at 6:22 p.m. and concluded at 7:55 p.m. 37 individuals addressed the Board as follows:

1. Landlord Dikak Patel said that the exemption for caregivers is reasonable. As to escorting visitors within the building, Mr. Patel said that each hotel is different and should be allowed to have their own policies, since they don't all have staff to sign in guests. Mr. Patel also felt that raising the time for requests for overnights to 9:00 shouldn't present too much of a problem, although the current 7:00 is "reasonable." Mr. Patel believes that the SRO Collaboratives represent a small segment of the SRO tenant population.

2. Tenant Melissa Burrell said that she cannot avail herself of overnight privileges unless necessary support is provided.

3. Tenant Frank Cole said there should be no blackout days, and just cause should be necessary for the eviction of problem tenants.

4. Tenant William Lockwood said that it is not always possible to request permission for an overnight guest in advance, and tenants should be allowed to do so until midnight. Mr. Lockwood believes that 15 overnight visitors should be allowed and that jail and temporary IDs with pictures should be allowed, since they are accepted at banks.

5. Landlord Henry Karnilowicz said that the tenants want the same privileges as apartment dwellers, but SROs are different. Since most hotels don't have private bathrooms, you can't double the capacity. Mr. Karnilowicz believes that the present rules are "generous", and that "kids under 18 aren't children." Mr. Karnilowicz advocated using the movie standard, PG-13. He also told the Board they should differentiate between non-profit and for-profit hotels, and that evictions are expensive.

6. Landlord Brad Patel told the Board that hotels are not eligible for reduced utility rates. Since he lives in his hotel and can't afford a desk clerk, Mr. Patel expressed a concern as to when he would sleep if visiting hours were expanded to 24/7.

7. Tenant Ellen Pound of the Jerry Hotel said that operators and managers don't need to hold IDs to know who's in the building – they just have to look at the log. Ms. Pound doesn't understand why it's so important to know who tenants' visitors are. She believes that the Visitor Policy should be posted in different languages at the front desk of the hotel and on every floor. Ms. Pound also feels hotel operators wouldn't think that the rules were reasonable if they had to obey them.

8. Tenant Bruce Allison advocated for 15 overnights per month, since that is what is allowed at the Isabel Hotel. Mr. Allison doesn't have to escort his guests, and wonders why other hotels can't do the same since "it is 2004, not 1904."

9. Tenant Joseph Brown of the Pierre Hotel said that desk clerks lose tenants' IDs, so there should just be a log sheet and tenants should have to show a picture ID to get in. Mr. Brown believes that day labor, jail and check cashing IDs should be accepted.

10. Sarah Norr of the Central City SRO Collaborative said that the requirement that tenants have to escort their guests is selectively enforced, and that "86-ing" of problem tenants and/or guests is an important tool that hotel operators can use. Ms. Norr suggested that it be required that incident reports be written up for issues regarding guests as well as tenants; otherwise, desk clerks have too much power. Ms. Norr offered the requirement of a receipt as a compromise on the issue of IDs: as it is now, tenants can't prove they are entitled to \$75.00 if the hotel loses their ID.

11. Tenant Lasale Love of the Albert Hotel said that she can't visit her friend after 9:00 p.m., and that isn't right.

12. Landlord Gerda Kircher agreed that hotel operators should not retain tenants' IDs, and she also agreed with some of the tenants' other demands. However, Ms. Kircher said that an owner should be entitled to have reasonable "house rules", especially in small hotels where the owners do the work. On the issue of children, Ms. Kircher feels that "real kids" should be allowed to visit, but not teenage hustlers. She also thinks that overnight guests shouldn't have to check in and out, caregivers should be permitted, and that blackout days are unnecessary.

13. Tenant Mark Hutchings of the All-Star Hotel is the parent of a teen-age daughter. He pointed out that, under the existing rules, he could only have his daughter stay with him for 8 nights. Mr. Hutchings believes he is being denied his court-ordered custody rights; he also advocated for the abolition of blackout days.

14. Tenant Gerardo Mendosa is enrolled in the Day Labor Program and has resided at the All-Star Hotel for 3 years. Mr. Mendosa told the Board that he is discriminated against because he is not in this country legally and he does not have a California ID. Mr. Mendosa said that he and all his friends are hard workers but they can't visit each other, which he equated to being a prisoner. Mr. Mendosa urged the Board to allow Day Labor Program IDs.

15. Julio Loyola of the Day Labor Program came to support the rights of immigrants, although he doesn't live in a hotel. Mr. Loyola asked how it could not be helpful to visit someone, and said that day laborers shouldn't have to be isolated. Mr. Loyola said the Board should accept Day Labor Program IDs, especially since they have a picture.

16. Tenant Luis Frias of the Mission Hotel said that he is tired of waking up in the middle of the night to take a guest to the bathroom. He has been written up two times for this, and it's a problem. Mr. Frias was homeless for two years, but is tired of all the rules he has to follow to stay in the hotel.

17. Allison Lum of the Mission SRO Collaborative told the Board that SRO tenants have to deal with these policies every day. She reminded the Board of the history of the Visitor Policy, which was enacted in 2002 to ensure tenants' rights to have visitors. Ms. Lum informed the Board of the process by which the Collaborative tenants came up with their demands: a survey of SRO tenants was conducted in August and September, which resulted in 133 tenants attending a Tenant Congress and formulating their proposals. Several of these tenants sat on the Committee convened by the Rent Board. Ms. Lum challenged the Commissioners to think about how they would feel if they had to live under these rules.

18. Tenant Delphine Brody told the Board that she had lived in the Seneca Hotel for nearly 7 years. During that time period, her girlfriend was homeless on and off, and Ms. Brody had to stay on the street in order to be with her. Ms. Brody advocated for: 24/7 visiting hours, no checkout times, an increased number of overnights, especially for non-consecutive stays, no blackout days, and an expansion of the types of IDs that are acceptable.

19. Tenant Bill Murphy said that since he is not wealthy, he is forced to live in an SRO. Mr. Murphy believes that he should not be subject to "random invasions" by management, nor should his visitors. Mr. Murphy feels that he has a right to privacy, and is upset because his girlfriend cannot come over to see him after work. Mr. Murphy asked that the Commissioners modify the Policy and make it more fair to everybody.

20. Tenant Chris Underwood said that he was homeless when the desk clerk lost his California ID, and the only way to get into the hotel was to have an ID card. An ID card is now \$20.00, whereas it used to be \$6.00. Mr. Underwood believes that blackout days don't make sense and reminded the Commissioners that everyone doesn't use drugs and alcohol.

21. Tenant Elaine Sharp of the Albert Hotel said she checked out several hotels where she was told she was not allowed to have visitors. Ms. Sharp supports 24/7 visiting hours and said that she didn't become a drug addict when she became poor.

22. Landlord Sanjiv Patel said that hotel operators should be allowed to have three, not two, blackout days, since it is "crazy on the street these days." Visiting hours should be from 10:00 a.m. until 7:00 p.m. rather than 9:00 a.m. until 9:00 p.m., since janitors should have a chance to clean. Mr. Patel explained that the Isabel Hotel can afford to have more liberal visiting policies since, as a non-profit, they receive subsidies.

23. Landlord Roger Patel said that he has been a hotel operator for 13 years. Mr. Patel believes that escorting visitors is necessary for security since he had a situation where a visitor forgot the tenant's room number and entered another tenant's room. Mr. Patel works from 8:00 a.m. until 5:00 p.m. and doesn't have an office – the smaller hotels cannot afford a lot of staff. He believes that tenants should be responsible for their visitors' behavior, since it is impossible for hotel operators to police visitors all the time. Mr. Patel has quarterly meetings with his tenants and says that no one has a problem with the present Policy. Mr. Patel finished by speculating that more overnights would result in decreased services to the existing tenants, and asked that the Board keep most of the present Policy intact "for the tenants' sake." 24/7 visiting hours would result in "havoc."

24. James Collins of the Mission SRO Collaborative asked why tenants should be penalized for paying more than 30% of their income for rent. Mr. Collins said that SRO tenants should have the same rights as any other tenant. Mr. Collins alleged that San Quentin inmates have fewer visitor restrictions than SRO tenants and said that it is up to the Commissioners to make sure that enforcement of the Visitor Policy occurs.

25. Landlord Shabber Mohammed said he accepts other types of IDs. However, there are many types of fake IDs, and how is a landlord to know?

26. Tenant Joe Shipman of the Royan Hotel said that there is limited handicapped accessibility in the hotel. Mr. Shipman feels that things are supposed to shut down at 10:00 at night, and he doesn't want to have to deal with noise in the middle of the night. Mr. Shipman said that breaking the rules should jeopardize one's living situation, but that hotel operators should have to post City and State laws that govern. Mr. Shipman concluded by saying that blackout days are "ridiculous" and make him feel like he's "sub-human."

27. Ellis McDonald of Mission Agenda said that the Visitor Policy should be posted everywhere, and tenants should not have to escort their visitors in the building. As to blackout days, Mr. McDonald finds it ironic that, on the one day a tenant can afford to have someone over, s/he is not allowed to. Mr. McDonald also believes that visitor rights should not be suspended for any reason.

28. Tenant Allen White told the Board that visitor restrictions cause real pain in a lot of people's lives, and that no one should have the right to tell someone who should have access to their room. Mr. White believes the Commissioners would be seriously offended if they were under such constraints. Mr. White suggested that all of these policies be thrown away, and that everyone be treated with respect. He feels that no one else is subjected to this "harassment and oppression."

29. Tenant Susan Marsh believes that 14 overnights would be reasonable, since tenants in SROs need social ties and access to their loved ones. Ms. Marsh feels that the Visitor Policy has been working well, since there are remedies for problem tenants and their visitors. Ms. Marsh concluded by saying that all SRO tenants are human beings.

30. Tenant William Hall told the Board that he had some questions regarding the survey.

31. Landlord Adil Shaikh said that SROs are more like supportive housing than hotels, and that rules are enforced for tenants' protection. Mr. Shaikh pointed out that the hotel operators didn't come up with the rules; other agencies

made suggestions. Mr. Shaikh believes that acceptance of jail IDs could cause harm and asked that hotel managers be given adequate time to clean and use the community bathrooms and kitchens. Mr. Shaikh agreed that exceptions to the rules should be made for the holidays.

32. Landlord Rupesh Patel said that all of the rules should be thrown out because they impinge on operators' rights. Mr. Patel told the Board that the amount of monthly rents charged at the hotels doesn't cover the cost of a desk clerk, and that anyone can get a check cashing ID. If a visitor kicks down a door, the tenant should be held responsible.

33. Landlord Narendra Patel told the Board that many of the operators live in the hotels and have relationships with their tenants – they know who are legitimate visitors. Mr. Patel said that the Commissioners should consult the police and fire department regarding the additional burdens expanding visitor rights could cause. Mr. Patel calls the police approximately 15 times per month regarding trespassing and there has been a "Domino Effect": the police response time has gradually increased. Mr. Patel asked that the Commissioners consider habitability and noise and said that the non-profit providers can blackball tenants and keep them out of their 1,200 rooms.

34. Landlord Summer Desai told the Board that he lives under the same roof as his tenants, who have rights because they pay rent. Mr. Desai said that 1-2 visitors are not a problem, but that guests staying for many consecutive nights become "semi-tenants." Too many visitors at a time clog up the toilets and bathrooms, and make it difficult to operate the hotel.

35. Tenant Dan Williams of the Hotel Coronado asked where a tenant can file to recover for a lost ID and what happens if a landlord fails to reimburse the tenant. Mr. Williams believes that hotels should be required to provide security, rather than making tenants act as escorts for their visitors. Mr. Williams supports the current visiting hours of 9:00 a.m. until 9:00 p.m. because he works.

36. Landlord N. Sharma feels that hotels should be treated like any other business, and allowed to have their own rules and regulations. Mr. Sharma said that 9-9 visiting hours should be sufficient, since these are 12 x 12' rooms. Mr. Sharma asked what would happen if hotel owners are put out of business, since it is already difficult to get insurance, and hard to prove whose guest committed an act of vandalism. Mr. Sharma believes that the SRO Collaboratives represent a small minority of SRO tenants, and said that hotel operators have already come a long way.

37. Nick Pagoulatos of St. Peter's Housing Committee thanked the Board for "a better process this year," and said that private SROs are more like

"exploitation mills" than supportive housing. Mr. Pagoulatos told the Board that the Visitor Policy was a response to criminal actions being taken by some hotel operators and that Supervisor Daly, the legislation's sponsor, favors an expansion of visitor rights. Mr. Pagoulatos speculated that "oppressive rules put people back out on the streets," whereas all City departments should be working to "keep folks housed." Mr. Pagoulatos concluded by stressing that the Policy should "allow people their humanity, since they only have fewer rights because they're poor."

After the conclusion of the Public Hearing, the Commissioners discussed the public comments and voted to amend the Visitor Policy as follows below:

Issue #2: Acceptable Forms of ID

MSC: To make clear that any valid California or out-of-state current government agency issued picture ID is acceptable, and to specifically add merchant seaman, Veteran's Administration and Day Labor Program IDs to the list of acceptable IDs.
(Justman/Gruber: 5-0)

Issue #11: Caregivers

MSC: To specify that caregivers shall not count against both daytime and overnight visitor limitations, although the owner or operator of the hotel may request medical verification or a caregiver ID card. (Justman/Gruber: 5-0)

Issue #5: Escorting visitors in the hotel

MSC: To prohibit any house rule that requires a tenant to escort their visitor(s) to the bathroom or other common area of the hotel; however, tenants are responsible for the conduct of their unaccompanied visitor. (Justman/Gruber: 5-0)

Issue #3: Check-in/out Times for Consecutive Visitors

MSC: To make clear that any visitor staying consecutive nights shall not be required to check in and out during the course of a consecutive stay. (Justman/Gruber: 5-0)

Issue #7: Check-in Time for Overnight Visitors

MSC: To change the time by which requests for an overnight visitor must be made from 7:00 p.m. to 9:00 p.m.

(Justman/Gruber: 5-0)

Issue #10: Children

MSC: To adjust the age at which children do not count against visitor limitations from 10 to 13; however, management shall still have the right to allow no more than 2 children per room at any time. To provide that court-ordered custodial rights, which end at age 17, shall be honored for purposes of consecutive overnight stays, although any such visits shall count toward the limitation on overnight visitors. (Justman/Gruber: 5-0)

Issue #1: Retention of IDs

MSC: To allow hotel operators to hold visitor IDs, but to provide that they must issue a receipt if they do so. (Justman/Gruber: 5-0)

Issue #4: Blackout Days

MSC: To continue to allow hotel owners and operators to restrict visitors on 2 of the 3 actual check days of each month. However, such blackout days shall not apply to children 13 years of age and under, custodial children or consecutive visitors. (Justman/Gruber: 5-0)

Issue #6: Visitor Behavior and Suspension of Visitor Rights

MSC: To leave the provisions of the Visitor Policy regarding visitor behavior and suspension of visitor rights unchanged, except as to new Section 2(F). (Justman/Gruber: 5-0)

Issue #8: Number of Overnight Visitors Allowed

MSC: To keep the number of overnight visitors allowed unchanged, at eight per calendar month. (Mosbrucker/Gruber: 4-1; Becker dissenting)

Issue #9: Duration of Visiting Hours

MSC: To keep the hours of visitation unchanged, from 9:00 a.m. to 9:00 p.m. daily. (Gruber/Justman: 5-0)

The Amended Hotel Visitor Policy reads as follows below:

UNIFORM HOTEL VISITOR POLICY

As amended December 8, 2004

1. No owner or operator of a single room occupancy hotel (SRO) shall deny a guest or occupant of the hotel the right as to:
 - A. Day Time Visitors
 1. To receive visitors between 9:00 a.m. and 9:00 p.m. daily. A maximum of two (2) day time visitors at a time per room may be imposed by management. There is no limit on the total number of visitors a tenant may have per day, week or month.
 2. Children 13 years old and under shall not be counted towards the visitor limitation rule. However, a maximum of two (2) children per room at a time can be imposed by management.
 - B. Overnight Guests
 1. To have eight (8) overnight guests per month, limited to one visitor per tenant per night. Only tenants who have resided in their unit for thirty-two (32) continuous days or more shall be entitled to have overnight guests. Court-ordered custodial rights, which end at age seventeen (17), shall be honored for purposes of consecutive overnight stays but any such visits shall be counted toward the limitation on the number of overnight visitors.
 2. For tenancies of two (2) persons per room, each tenant is permitted to have eight (8) overnight visitors per calendar month, but those tenants will have to reach agreement as to who will have the one (1) visitor per night if there is a dispute.
 3. Tenants are entitled to have a visitor stay eight (8) days consecutively in a calendar month. Any visitor staying consecutive nights shall not be required to check in and out during the course of a consecutive stay.
 4. Requests for overnight guests shall be made no later than 9:00 p.m. on the same day.
 - C. Caregivers of disabled tenants shall be exempt from visitor limitations. The owner or operator of the hotel may request medical verification or a caregiver I.D. card.
2. Owners and operators of SROs shall have the right to adopt reasonable rules and regulations to ensure that the visitor rights set forth above do not infringe on the health and safety of the building and/or otherwise interfere with the tenants' right of quiet enjoyment.
 - A. Owners or operators are entitled to request that visitors provide identification as follows:
 1. Only ONE of the following types of I.D. need be provided: a valid and current passport, a California Department of Motor Vehicles (DMV) issued I.D., a Mexican Consular Registration Card or Resident Alien Card, merchant seaman I.D., a Day Labor Program I.D., Veteran's Administration I.D. or any valid California or out-of-state current government agency issued picture I.D.
 2. Owners/managers can require that an I.D. be left with management during the visitor's stay, but they must provide a receipt if they do so.
 3. A log must be maintained by management and the visitor must sign in and sign out when the I.D. is surrendered and when it is returned.
 4. If the I.D. is lost or misplaced and not returned within 12 hours of the visitor's request to have it returned, the owner/manager shall pay the visitor \$75.00 in cash immediately upon demand by the visitor as compensation for the loss and inconvenience of replacing the lost I.D.

- B. Owners and operators shall have the specific right to restrict visitors on two (2) of the three (3) actual check days of each month. Providers are required to post those blackout dates at least five (5) days prior to the first blackout date on a minimum size of 8-1/2" x 11", to be posted prominently by the entrance or in the lobby. Blackout dates shall not apply to children thirteen (13) years of age and under, custodial children or consecutive visitors.
 - C. Owners and operators may deny visitor rights for 30 days to tenants who are repeat violators of hotel visiting rules. No penalty may be imposed until the second violation. All notices of violation of the policy, including the first notice, must be in writing with a copy provided to the tenant.
 - D. Tenants who disagree with the imposition of a penalty may either:
 - 1. appeal to the operator or tenant representative (if one is present); or, in the alternative,
 - 2. the tenant may go directly to the Rent Board for adjudication of their complaint.
 - E. Owners and operators shall also have the right to limit the number of nights any single visitor can make to the property to eight (8) per calendar month.
 - F. Tenants shall not be required to escort their visitors to the bathroom or other common areas of the building. However, the tenant is responsible for the conduct of their unaccompanied visitor.
3. Nothing in this section shall interfere with the rights of owners and operators of SROs to exclude specific visitors who willfully or wantonly:
- A. disturb the peaceful enjoyment of the premises by other tenants and neighbors;
 - B. destroy, deface, damage, impair, or remove any part of the structure or dwelling unit, or the facilities or equipment used in common; or,
 - C. have committed repeated violations of the visitor policy which can be construed as creating a nuisance on the property; or constituting substantial interference with the comfort, safety or enjoyment of the landlord or tenants, which can be a just cause for eviction under the Rent Ordinance, as determined by the courts.
4. SRO owners or operators shall make available to their tenants a copy of any written Supplemental Visitor Policy that complies with this policy. SRO owners or operators are required to prominently post the Uniform Visitor Policy and any Supplemental Visitor Policy on a minimum size of 11" x 17" by the entrance or in the lobby.
5. Other than as a settlement of an unlawful detainer action, a tenant cannot waive the rights as outlined in this legislation. Any agreement between the SRO owner or operator and the tenant that reduces or limits the rights set forth in this legislation shall be deemed void and unenforceable.
6. Tenants are accorded certain and specific rights as a result of this legislation. If the SRO owner or operator violates this provision, a tenant will have legal recourse and will be encouraged to visit the San Francisco Rent Stabilization Board or the Police, as appropriate.
7. SRO owners or operators seeking a modification of the rights set forth above may file a petition with the San Francisco Rent Stabilization Board and receive a hearing on said petition. Notice of the time and date of said hearing shall be prominently posted by the SRO owner or operator above the front desk of the hotel, in the lobby and at least five (5) copies shall be posted on each floor of the building.
8. The Rent Board shall translate the Uniform Visitor Policy into the predominant languages of the community and make them available as needed.

IV. Adjournment

Commissioner Becker adjourned the meeting at 9:37 p.m.



ACCESSIBLE MEETING POLICY

American sign language interpreters will be available upon request. Please contact the Rent Board at 252-4603 at least 72 hours prior to the meeting. Translation services, sound enhancement or alternative formats are available if requested at least 72 hours prior to the meeting. Call 252-4603 to place your specific request. Late requests will be honored if possible.

會議提供翻譯服務，聲量增強器或其他信息安排，但必須在會議舉行七十二小時之前提出申請。申請電話號碼是 252-4603。

Se pueden obtener servicios de traduccion, ampliacion de sonida, u otras formas de presentacion si se solicitan por lo menos 72 horas antes de la reunion. Llame al 252-4603 para hacer su solicitud.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City to accommodate these individuals.

Rent Board Commission meetings are held at 25 Van Ness Avenue, Suite 70, lower level, and are wheelchair accessible. The closest accessible BART station is located at Civic Center. All MUNI Metro lines at Van Ness and Market Street are accessible. For other accessible MUNI lines serving this location and information about MUNI accessible services, call 923-6142.

There is accessible parking available on adjacent streets (Oak Street and Hickory). Metered street parking is also available.

Policy of Nondiscrimination on the Basis of Disability and Equal Employment Opportunity Statement

The Rent Board does not discriminate on the basis of disability in employment or in the admission and access to its programs or activities.

Timothy Lee has been designated to coordinate this agency's compliance with the nondiscrimination requirements of Title II of the Americans with Disabilities Act (ADA). Information concerning the provisions of the ADA, and the rights provided under the Act, are available from the ADA Coordinator. The Rent Board TTY number is 554-9845.

Know Your Rights Under the Sunshine Ordinance

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

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**NOTICE OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

GAVIN NEWSOM
MAYOR

DELENE WOLF
ACTING EXECUTIVE DIRECTOR

SHARON K. WASSERMAN
PRESIDENT

POLLY MARSHALL
VICE-PRESIDENT

Tuesday, 6:00 p.m.,
December 14, 2004
25 Van Ness Avenue, #70, Lower Level

AGENDA

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LARRY BEACH BECKER
DAVID GRUBER
DEBORAH HENDERSON
JIM HURLEY
ANTHONY JUSTMAN
CATHY MOSBRUCKER
NEVEO MOSSER
BARTHOLOMEW MURPHY

- I. Call to Order
- II. Roll Call
- III. Approval of the Minutes
- IV. Remarks from the Public

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

- V. Consideration of Appeals

A. 2757 – 43rd Ave. AL040146

The landlord appeals the decision granting a claim of unlawful rent increases.

B. 2124 Hyde St. #3 AT040122

The tenant appeals the decision denying a claim of decreased housing services.

C. 847 Clay St. #20 AT040147

The tenant appeals the decision denying a claim of decreased housing services.

D. 1168-1170 Stanyan St. AL040138

The landlord appeals the decision granting decreased housing claims for the tenants in two units.



E. 4340 Anza St.

AL040148

The landlord appeals the remand decision partially certifying capital improvement costs.

F. 3338 – 16th St.

AL040149

The landlord appeals the decision granting a claim of unlawful rent Increase.

G. 625 So. Van Ness Ave.

AT040150

The tenant appeals the decision finding that a rent increase was authorized by Costa-Hawkins.

H. 941 Irving St. #3

AL040151

The landlord appeals the decision granting claims of decreased housing services.

VI. Communications

VII. Director's Report

VIII. Old Business

IV. Remarks from the Public (cont.)

NOTE: Pursuant to Section 2.13(e) of the Rules and Regulations, members of the public shall be limited to comments of no more than 3 minutes' duration.

IX. New Business

X. Calendar Items

XI. Adjournment



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City of San Francisco
The Rent Board

December 14, 2004

**MINUTES OF THE REGULAR MEETING OF
THE SAN FRANCISCO RESIDENTIAL RENT
STABILIZATION & ARBITRATION BOARD,**

**Tuesday, December 14, 2004 at 6:00 p.m. at
25 Van Ness Avenue, Suite 70, Lower Level**

I. Call to Order

President Wasserman called the meeting to order at 6:05 p.m.

II. Roll Call

Commissioners Present: Becker; Gruber; Henderson; Hurley; Justman;
Mosbrucker; Wasserman.

Staff Present: Wolf.

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Commissioner Murphy appeared on the record at 6:15 p.m.; Commissioner Mosser arrived at the meeting at 6:30 p.m.; Commissioner Marshall appeared at 6:25 p.m. and went off the record at 7:05 p.m.; and Commissioner Justman left the meeting at 7:07 p.m.

III. Approval of the Minutes

MSC: To approve the Minutes of November 23, 2004.

(Becker/Gruber: 5-0)

IV. Remarks from the Public

A. Attorney Robert Peterson, representing the landlord at 2757 - 43rd Ave. (AL040146), told the Board that the landlord only gave four rent increases in twelve years, and that the tenant waited six years to bring the issue before the Rent Board. Mr. Peterson told the Board that California law allows waiver, and that all of other increases were within legal parameters, but were on an incorrect base rent amount.

V. Consideration of Appeals

A. 2757 - 43rd Ave. AL040146

The tenants' petition alleging unlawful rent increases was granted, and the landlord was found liable to the tenants in the amount of \$883.58. On appeal, the landlord maintains that: Rules and Regulations Section 4.10(a) specifies that an increase is null

and void if it exceeds allowable and banked increases, which the rent increases herein did not do; the tenants waived their right to written notices of rent increase; and the February 1999 and July 2004 rent increases should not have been adjusted just because they were assessed on improper base rent amounts.

MSC: To deny the appeal. (Becker/Mosbrucker: 5-0)

B. 2124 Hyde St. #3 AT040122

The tenant's petition alleging a decrease in housing services due to the loss of use of a water faucet and hose for washing his car was denied. The Administrative Law Judge found that use of the hose was not a housing service included or promised at the inception of the tenancy, nor was the loss of such use substantial. On appeal, the tenant argues that: use of the hose was part of a verbal rental agreement with the prior owner; permission to use the hose was implied; and the burden of proof required by the Administrative Law Judge was impossible for the tenant to meet.

MSC: To deny the appeal. (Gruber/Murphy: 5-0)

C. 847 Clay St. #20 AT040147

The tenant's appeal was filed five days late because the tenant is not a native English speaker and did not understand the filing deadline until he had the Decision translated.

MSC: To find good cause for the late filing of the appeal.
(Becker/Murphy: 5-0)

The tenant's petition alleging decreased housing services due to alleged noise from the upstairs tenants and seismic retrofit work done in the building was denied because the Administrative Law Judge found the conditions to be reasonable. The tenant appeals, claiming that the amount of people in the upstairs unit exceeds the occupancy limitations in the lease so that the noise is beyond that which is reasonably to be expected.

MSC: To deny the appeal. (Gruber/Murphy: 5-0)

D. 1168-1170 Stanyan St. AL040138

The landlord's appeal was filed five days late because the landlord was attempting to ascertain the facts surrounding the untimely death of one of the tenants.

MSC: To find good cause for the late filing of the appeal.
(Murphy/Gruber: 5-0)

Two tenant petitions alleging decreased housing services were granted and rent reductions in the amount of \$100 and \$75 per month were ordered for the loss of a roof deck to both units; and \$30 for the loss of a back porch to the tenant in unit 1170 only. On appeal, the landlord claims that there are errors regarding the back stairs and the amount of the rent reduction for the roof deck in the Decision; and that a resolution agreed to at the hearing is different from the Decision.

In order to review a submission provided by counsel to the landlord just prior to the meeting, the Board passed the below motion:

MSC: To continue consideration of the appeal. (Murphy/Gruber: 3-2; Becker, Marshall dissenting)

E. 4340 Anza St. AL040148

The landlords' petition for certification of capital improvement costs was granted, but in a lower amount than that requested by the landlord. The landlord's appeal was accepted, and the case was remanded to obtain square footage measurements of the residential and non-residential areas of the building as well as to look at the issue of user fees for purposes of allocating the costs. In the Decision on Remand, a proportion of the costs are allocated to garages in the building, on a square footage basis. The landlord appeals the remand decision, arguing that: a tenant in the building rented one of the garages for a 6-month period; the square footage of building appendages, such as fire escapes and bay windows, should be added to the calculation; it would be more equitable to use a formula based on revenue relative to building space and the garages comprise no more than 15% of the building's worth; and there were procedural irregularities in the issuance of the decision.

MSC: To deny the appeal. (Becker/Justman: 5-0)

F. 3338 - 16th St. AL040149

The tenant's petition alleging an unlawful rent increase was granted. The Administrative Law Judge found that the landlord and tenant entered into a new tenancy pursuant to a Settlement Agreement in resolution of an Unlawful Detainer, and the tenant had not been put on notice that a rent increase pursuant to Rules Section 6.14 would subsequently be issued. On appeal, the landlord maintains that: the tenant failed to prove that the landlords waived their right to a rent increase under Section 6.14; the landlords expressly reserved their rights under the Rent Ordinance in the Settlement Agreement; the landlords increased the rent within 90 days of learning that the last original tenant was vacating the premises; and the tenant did not assert that a new tenancy had been created but, rather, that his was a continuing tenancy based on a claim of acceptance of rent.

MSC: To deny the appeal. (Marshall/Becker: 3-2; Gruber, Murphy dissenting)

G. 625 So. Van Ness Ave. AT040150

The tenant's petition alleging an unlawful rent increase was denied because the Administrative Law Judge found that the tenant was a subtenant who moved in to the unit after January 1, 1996, there are no original occupants residing on the premises and the increase is therefore authorized by Costa-Hawkins. On appeal, the tenant argues that: the prior landlord accepted his rental application and cashed his check, thereby accepting him as a tenant; the tenant never vacated the premises or relinquished his tenancy; and absences from the unit were of a temporary nature.

MSC: To deny the appeal. (Gruber/Murphy: 5-0)

H. 941 Irving St. #3 AL040151

The tenants' petition alleging decreased housing services was granted, in part, and the landlord was found liable to the tenants in the amount of \$1,692.64 due to inadequate water service in the building and a leaking window. On appeal, the landlord maintains that: adequate water pressure was restored to the building as of October 12, 2004, whereas the rent reduction granted in the Decision extends through

November 30, 2004; the water pressure deficit was not the landlord's fault and the Decision is unfair; the window is not leaking but, rather, the problem is one of condensation; and the amount granted for the leaking window is arbitrary and excessive.

MSC: To accept the appeal and remand the case to the Administrative Law Judge on the issue of the correct termination date for the rent reduction granted for inadequate water pressure; a hearing will be held only if necessary. (Becker/Gruber: 5-0)

VI. Communications

In addition to correspondence concerning cases on the calendar, the Commissioners received the following communications:

- A. The office workload statistics for the month of October, 2004.
- B. A letter from a tenant regarding the Uniform Visitor Policy for residential hotels.
- C. A copy of the Court of Appeal Decision in the case of Baba v. Board of Supervisors of the City and County of San Francisco (124 Cal.App4th 504).

VII. Director's Report

Acting Executive Director Wolf reminded the Commissioners that the staff holiday party will be held on Thursday, December 16th from noon until 2:00 p.m. at Don Ramon's restaurant, and all of the Commissioners are invited to attend.

IV. Remarks from the Public (cont.)

- B. The tenant in the case at 625 So. Van Ness (AT040150) told the Board he believed that the PG&E bill he had furnished with his appeal provided the "paper trail" that proved he lived in the unit. He said that he wasn't there for only a few months, while he was pursuing his baseball career.
- C. One of the tenants at 1168-1170 Stanyan St. (AL040138) clarified that the landlord's appeal regarding both units at the property was being continued.
- D. Tenant Robert Louie at 847 Clay St. #20 inquired regarding the disposition of his appeal.

VIII. Calendar Items

December 21st & 28th, 2004 - NO MEETINGS

January 4, 2005

7 appeal considerations (2 cont. from 11/23/04)

New Business: Ordinance Section 37.9(a)(2)(B) regarding Additional Occupants in a Unit

IX. Adjournment

President Wasserman adjourned the meeting at 7:15 p.m.



